

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

MICHAEL J. MORGAN,
Plaintiff

vs.

RICKY J. SPIVEY, et al,
Defendants.

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) 5:16-CV-00365-FL
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SEPTEMBER 24, 2019
CLOSING ARGUMENTS
BEFORE THE HONORABLE LOUISE FLANAGAN
UNITED STATES DISTRICT JUDGE

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Raleigh, North Carolina
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1 (Tuesday, September 24, 2019, commencing at 11:12 a.m.)

2 P R O C E E D I N G S

3 THE COURT: Okay.

4 Let's go ahead and get our jury in.

5 (The jury entered the courtroom at 11:13 a.m.)

6 THE COURT: Ladies and gentlemen, the parties have
7 diligently and thoughtfully presented their cases to you. And
8 now we've reached the part of the trial where each side comes
9 forward to present closing argument to you based on the
10 evidence that's been presented and the law, as the parties
11 understand it.

12 And you'll hear first from the plaintiff, then the
13 defendants will have the opportunity, and then plaintiff will
14 come forward as, again, it bears the burden, it will present
15 its -- his final closing arguments to you. And then, I will
16 instruct you as to the law. And then, I will recess and you
17 will retire to the jury room and that's when you can begin to
18 talk about the case.

19 All right. Counsel, I welcome you forward.

20 MR. ZAYTOUN: Thank you, Your Honor.

21 Good morning. I'm Robert Zaytoun, the Law Firm of
22 Zaytoun, Ballew & Taylor. You saw two-thirds of that firm at
23 trial; Mr. Ballew. Mr. Taylor you didn't actually see, but he
24 actually took the deposition of Mr. Sutton.

25 And I'm often asked: What is the average height of

1 your firm, Mr. Zaytoun? Because Mr. Ballew is about 6'8 and
2 Mr. Taylor is a lanky, sort of an Abe Lincoln type 6'4 and you
3 see me. So I say, we average about 6'2.

4 You're probably wondering, then, why am I going
5 first? It's not because of my height. Maybe it's because of
6 my gray hair. But actually, there's an order to this process.
7 And you're going to hear from me first, then you're going to
8 hear from two lawyers for the defendants, and then you're going
9 to hear from Mr. Ballew at the end. And that's going to be a
10 lot of talking.

11 Members of the jury, this is a very important case.
12 It's a historic case that's been tried here in historic New
13 Bern, in this historic courtroom, this majestic courtroom, but
14 history can be made by this jury in this case. This building
15 used to be the post office in New Bern. I know that because I
16 used to get my granddad's mail from the bottom of floor box
17 987.

18 To be here now in front of you is an honor and it is
19 an honor for our team to represent Mike Morgan. And we are a
20 team.

21 Now, this thing right here, you probably have seen me
22 writing a lot in this. This is sort of like my diary of the
23 trial. And you've probably seen a lot of sticky notes passing
24 between us. You know, in this age of technology it's still
25 important to write. And we write a lot because we are a team.

1 And we send messages to each other very openly through those
2 sticky notes; they're important.

3 Why do I tell you this? Because, as a team, we began
4 years ago representing Mike Morgan in a tragic incident that
5 happened in 2013. And we are now six years and plus past that
6 event. And we have come to the point at the end of this trial,
7 and at the end of this journey for Mr. Morgan, where you can
8 write the final chapter. You can determine what is just, what
9 is true.

10 The word "verdict" comes from the old Latin term to
11 seek the truth. And that's what this function has been for the
12 jury over the last week-and-a-half, to hear facts and for you
13 to decide: What is the truth? What happened out there? Who
14 is telling the truth? Credibility. That is solely within the
15 province of you, the jury. You decide the facts.

16 Now, His Honor -- "His Honor." Well, that's not the
17 first time. Judge Flanagan, as you can probably see, is an
18 excellent jurist. She is the keeper of the law. And I'm going
19 to talk to you in a few minutes about the law because you've
20 got to combine the truth, the facts, with the law to determine
21 what the true verdict is. And that's called the justice of
22 what we're doing.

23 It's pretty simple equation, but it's not as simple
24 as just one, two, three because there are 10 of you individuals
25 and each one of you brings to that jury box your own lives,

1 perceptions, ways that you hear things, believe things. Each
2 one of you, though, has common sense.

3 And we're going to ask you to put that common sense
4 to work as you hear this evidence reviewed that you've heard
5 over the last week-and-a-half. Because the guiding polar star
6 for you is what makes sense. Does it make sense what they said
7 over there? Does it jive with the physical evidence? Is it
8 corroborated?

9 Those are the kinds of things that you and your power
10 -- and it is power. Our democracy places in that jury box
11 power. And we are very unique on this planet for this process.
12 And I'm not trying to patronize you. I'm simply trying to tell
13 you at this point we're going to give the case to you.
14 Mr. Morgan is going to give his case to you. That's the way it
15 works.

16 So I want to get right down to it. And sometimes to
17 go forward you got to go backward. And I'm going to do that.
18 Because, as you recall with the lawyers, this started with
19 opening statements. And the judge told you it's not evidence,
20 et cetera, but it's the opportunity for the lawyers to give you
21 a roadmap of what they project you're going to hear from their
22 evidence, kind of a blueprint.

23 Well, I look at an opening statement as actually a
24 series of promises that a lawyer makes to the jury. And I want
25 you to ask yourself as you recall -- and I'm going to recall

1 some of the things that Mr. Ellis said in his opening
2 statement -- did he produce? Did he keep his promise? Did he
3 produce the evidence he said he was going to produce? And I
4 tell you -- and we can argue now; in the opening statement we
5 can't argue, but now we can. I argue to you that you should
6 say a resounding no, he did not.

7 Never have we seen, witnessed such a Herculean effort
8 to construct a chair to support their version. Well, let's say
9 it's a four-legged chair. What happens when you remove two
10 legs? It's going to topple over. What if you remove all four?

11 I submit to you that Mr. Ellis and his team
12 constructed a wobbly chair that you will find you would not
13 want to sit on after he makes his presentation. And that's not
14 just a metaphor I'm using.

15 Think about this just for four -- four legs of the
16 chair. Deputy Spivey was trapped. He was pinned down by
17 Mr. Morgan. He couldn't go around. We're going to talk a
18 little bit more about that, but you know he could have -- you
19 know he could have gone to the left or the right. Even their
20 own expert showed you that, very clearly on the program.

21 No tire marks. Leg number two, gone. Where are the
22 tire marks behind Mr. Morgan's wheels? Now, you think about
23 this: This thing happened, it's still daylight, but then it
24 went into the night. And what did they do? It became a crime
25 scene. Now, when everybody got out there to create the crime

1 scene, the three deputies and Mr. Johnson were there, right
2 there, could have been interviewed separately and taken around
3 that field and shown everything that they said was important
4 that corroborated their version of what happened. They didn't
5 do that.

6 But as law enforcement does, they brought in the
7 investigators. They had complete control of that field. They
8 had a generator. They had lights -- the kind of lights you see
9 at a football field; it was so bright. Not one single
10 photograph taken from behind the wheels of Mr. Morgan's truck.
11 Why? The officers all testified -- Mr. Sutton confirmed that
12 in his last few questions, they all testified he floored it, he
13 stomped on the accelerator, those tires were digging in and
14 spitting up dirt, leaving grooves and going down until it
15 stopped after Deputy Miller shot him.

16 Where are the grooves? That is the most profound
17 piece of physical evidence that you are entitled to have if
18 you're going to accept their version of what happened. Don't
19 you know they would have taken those photographs if they were
20 there? Oh, they took plenty of photographs. They made sure
21 that they documented how wild and crazy Mr. Morgan was
22 fishtailing around there. You saw how clear those photos were
23 of those grooves.

24 But you also saw the back of Mr. Morgan's truck. You
25 didn't see one single photo, from point A until it stopped at

1 the tree line, that would corroborate what they say, and we all
2 know and your common sense knows what would happen if you
3 floored that vehicle with those profile tires with the ripples
4 on them in the dirt, not on a tightly-mowed grass field like
5 their experts did his experiments.

6 Fourth chair, leg of the chair, no brush. Now, you
7 did see some brush coming off the truck when Mr. Morgan was
8 fishtailing, but that was after they'd removed the ties and put
9 them in the side pocket of the truck, like they always do. Did
10 you hear anybody testify that they looked in those compartments
11 and they weren't there?

12 You saw the dash cam video from the point where they
13 were doing the tree work until they got to the field. That's
14 quite a distance. Not a single branch on the road. And that
15 was their fourth delivery. But, yet, Deputy Spivey says
16 Mr. Morgan carelessly and recklessly left the road.

17 And we're not quite sure now, after Deputy Spivey
18 testified, where he left the road, where he's saying he left
19 the road. Because on cross-examination he seemed to suggest
20 that he left the road at the middle entrance, but at the trial
21 he testified that he left the road at the north end where
22 things first started happening.

23 But the bottom line is, there is no brush on that
24 road. And that was his basis for charging Mr. Morgan with
25 careless and reckless driving.

1 And he tried his best to put brush into your set of
2 facts. Remember when he drew those blue circles?

3 Can we get that up on the screen?

4 I'm out of order. So if you can't find it, we'll
5 come to it.

6 MR. BALLEW: Just give us a moment.

7 (Video played in open court.)

8 MR. ZAYTOUN: Take it up to the place where you
9 recall Mr. Spivey was on that witness stand and he was being
10 asked about the brush that he said fell out of the truck.

11 Stop right there.

12 And even though his blue circles were removed -- you
13 recall your memory -- where did he draw circles to show the
14 brush in that photograph? I would suggest that he drew the
15 circles where those two dark spots are, which is where the
16 middle entrance is and where the culverts are.

17 That doesn't take common sense, to know that that's
18 not true. There was no brush that fell off that truck. They
19 secured that load. They drove normally. They didn't speed up
20 when they saw Deputy Spivey go by them. They didn't go down to
21 Mr. Morgan's home and try to drive into the back and hide.
22 They went to deliver their load, to unload their truck.

23 Then, they saw him come by and come back down to
24 where they were. And the first thing that Deputy Spivey said
25 was, boy, let me see your driver's license. Did he say: You

1 just trashed out the road? You failed to secure your load,
2 which is a traffic offense you can be charged with if you fail
3 to secure your load? No. Because they did secure the load.

4 That's four legs right there.

5 Now, let's -- let me give you some more to show you
6 just how Mr. Ellis -- I'm not picking on him. He stood up here
7 and he told you what he told you, and I'm just going to comment
8 on it. He said, "There will be no evidence that defendants are
9 rookies and didn't know what they were doing. Thirty years of
10 law enforcement officers' service and thousands of hours of
11 training."

12 Now, did he tell you that included the training that
13 Deputy Miller had to get after he got kicked off the force for
14 lying? Went into a car business. And then, tried to come
15 back -- after his deposition, he came back to get his law
16 enforcement certification. And the sheriff went over and
17 vouched for him so that he could be a law enforcement officer
18 when he got into this courtroom. But did Sheriff Harrison
19 rehire him at the sheriff's department?

20 This one. "You're going to find no evidence that
21 these defendants were cowboys doing whatever they wanted to
22 do."

23 Can we get the dash cam video up of the --

24 Now, you remember Deputy Miller and Legan were
25 getting ready to sit down for dinner. They were waiting for

1 Mr. Spivey to meet them. All three of them, the three area
2 deputies were going to be in the same place eating dinner that
3 night. It's okay. And they heard the call on the radio by
4 Deputy Spivey; normal voice, didn't say mayday, mayday, I need
5 backup, backup. He just said I've got a traffic stop here and
6 I've got Mike Morgan in the traffic stop.

7 Now, what did they do? You would have thought they
8 were responding to an armed robbery in progress. They
9 jumped -- they left the table, if they were at the table,
10 jumped into their cars and you saw the entire dash cam video of
11 their racing, NASCAR style, through the country roads to get to
12 where Deputy Spivey was.

13 At one point -- and they didn't show this to you when
14 they were showing the dash cam of the traveling between the Two
15 Guys Restaurant -- Two Boys Restaurant and the scene. But at
16 one point I saw them -- remember, Miller is not high-speed
17 certified. Legan was. But the camera was in Miller's car. So
18 everything we see is Miller. And we see Deputy Legan up in the
19 front. At one point, I saw Miller cross a double yellow line
20 on a two-lane road and another vehicle is coming toward him.
21 Was that really necessary to endangerer potentially motorists
22 on the road?

23 Can you show that section?

24 (Video played in open court.)

25 MR. ZAYTOUN: Right there. That would have been

1 Miller on the double yellow line with a car coming forward.

2 I recall another point, they got up to 100 miles an
3 hour on a two-lane road. All to get to where Deputy Spivey was
4 because they were worried about weapons. Their computer screen
5 said Mike Morgan had weapons and they were concerned.

6 And members of the jury, I do not want to downplay
7 one officer's concern for his fellow officer or female officer.
8 This is not an anti-law enforcement case. This is anti-rogue
9 law enforcement. We need law enforcement. We need -- or we'd
10 be in anarchy. We need to be kept safe. They put their lives
11 on the line, that is absolutely true.

12 Did they need to put their lives on the line with
13 that 100-mile-an-hour NASCAR -- where Deputy Spivey was and
14 jeopardize the lives of somebody coming out of a driveway or a
15 child on a bicycle?

16 Why did they do that? Well, they said because Mike
17 Morgan had weapons and they were concerned for Deputy Spivey,
18 who had not called for back up. And you saw what happened when
19 they got there. They pulled up, flashers going. They think
20 they killed their sirens down the road, they said. Flashers
21 were going. And then they get out of their car and they walk
22 over to where their conversation is happening.

23 Deputy Legan says he didn't have a Maglite in his
24 hand. I saw a big, long black thing in his hand. I don't
25 know. It didn't look like a radio. But the bottom line is,

1 when they got to the scene worried about Mr. Morgan with
2 weapons, what did they do?

3 Did they ask -- did they frisk Mr. Morgan to see if
4 he had weapons? If they had, they didn't need to frisk him
5 because he was wearing a knife on his belt, a pocketknife that
6 he uses climbing trees. So the whole time they are out there
7 with Mr. Morgan he has a visible weapon, a knife in the sheath,
8 in the case, so it doesn't fall out when he goes into a tree.

9 Well, Deputy Legan, what did he do out there? The
10 whole thing is calm. Deputy Spivey didn't say I'm glad you-all
11 are here, man, it's getting tense here. No. He was in his
12 squad car. You saw -- you heard Jimmy Henley talking about
13 where everybody was initially before Miller and Legan got
14 there. And was that a position that a law enforcement officer
15 would have two persons, particularly one known to have weapons,
16 around him? No. That was a calm -- Deputy Spivey wasn't
17 worried one bit about weapons. He had one on each side of him
18 and he was in his car on his computer.

19 Now, when they arrived, they joined into the banter
20 while Deputy Spivey was still on his computer. And what did
21 Deputy Legan decide to do when it came up about the
22 registration? Well, he heads over and just starts willy-nilly
23 going into the car. And Mr. Morgan says, you don't have the
24 right to go in my car and search my car; I'll go look at it.
25 Now, we've got three armed officers right there. What would

1 be -- what possibly could Mike Morgan do but go into his car
2 and look for his registration? How would that be dangerous?
3 But, no.

4 Deputy Legan -- Deputy Legan. Interesting, two
5 incidents with Deputy Legan where he uses this unusual phrase,
6 when you go to law school you can tell me what to do. Now,
7 Deputy Legan have a law degree? I don't know. I don't think
8 so. He had a lot of advanced training, I agree. He's now with
9 the highway patrol. But he said, when you-all get a law degree
10 you can tell me what to do. And then he proceeded to go right
11 through that car and he searched it, up one side and down the
12 other.

13 Did he pull out a bunch of weapons? No. In fact,
14 the condition of that car -- can we go to the -- I think it's
15 Exhibit 312 -- no. Exhibit 312. And pages 86 -- 75, 86 and
16 98. Let's go to 75 first.

17 This is the photograph taken of Mr. Morgan's vehicle.
18 It had to be after the events happened because it was taken by
19 CCBI. I'll call this the before photograph. Look in that
20 front compartment. Do you see a bunch of stuff piled up in
21 there, a bunch of weapons?

22 Now, let's go to page 98 of Exhibit 312.

23 This also was created, staged, I would submit, after
24 the event. And, oh, there's that knife. It's hard to see it.
25 It's right there near you on the seat, below that black case,

1 that -- they called it a tactical knife. Do you think they
2 were trying to create an impression that this was an armed
3 truck because Mr. Morgan was supposedly a person who had
4 weapons?

5 Go, if you would, to page 86 of that same exhibit,
6 312.

7 Now, if you look at the position of that wheel chunk,
8 which is what Mr. Morgan uses it for -- he puts it behind the
9 wheels to keep the chipper from rolling backwards. That's not
10 the way he keeps it. He puts it in that little pocket and it
11 slips down on the floor of it. Who propped it up with what
12 looks like a water bottle or some plastic bottle so you can see
13 it clearly?

14 Why were they doing that? Because they had control
15 of the crime scene. Were they trying to create an impression
16 that Mr. Morgan was armed and dangerous when they spent 15 to
17 20 minutes back at the north end of the property with him
18 wearing a knife on his belt and they didn't ask him to remove
19 it? Why would they do that?

20 A few more things from Mr. Ellis' opening.

21 But I'll lead with this one, with -- Deputy Spivey
22 drives up to where Mr. Morgan is. They're eye-to-eye because,
23 remember, Mr. Morgan said he pulled up so that he could still
24 see Deputy Spivey, but still knew he had enough room to go
25 around him. And what did Deputy Spivey say to Mr. Morgan? And

1 this is a person -- and there is evidence you can consider from
2 Lorraine who testified that Deputy Spivey said he was going to
3 get Mike. He said (inaudible). And I submit to you that Mike
4 was close enough to read those lips, "Move the F'ing truck" is
5 what he said.

6 Earlier they're watching Mike. And there is no
7 question of fact established -- is that when Mike Morgan saw
8 that he had been ticketed for careless and reckless driving on
9 his own property, he got upset. But he didn't get upset and
10 slap the ticket away and say, you're not giving me that ticket,
11 I ain't going to take it, let's get it on. No. He took the
12 ticket. He said, am I free to go, are we free to go? They
13 said, you're free to go. At that point, it was over.

14 And what did he do? He went into the next room to
15 blow off some steam. He got in his truck and he drove to the
16 other end of the field, well away from them, where if he kicked
17 up any dirt or rocks it wouldn't bounce on one of their cars
18 and they'd be on him like that for damage to State property.
19 But he was kicking off some steam. He says, I'll show you what
20 careless and reckless driving is.

21 Now, all 10 of you, would any of you have done that?
22 I would submit probably not. But was he doing anything
23 illegal? Did he remove himself from the officers so that he
24 didn't have a scene with them? Was he on private property?
25 Was he commanding his truck skillfully, I would say, doing

1 those doughnuts?

2 They didn't like it. What did they say? Was it
3 Legan or Miller, I can't remember, one of them said you going
4 to go get him? And Spivey says, if he touches that highway,
5 he's mine. He didn't touch the highway.

6 So they're leaving the field. And Deputy Spivey on
7 one of the rickety, rickety legs of that chair is trying to
8 tell you that he was -- that all he wanted to do was just leave
9 the field, just get back on the road to his duties. What you
10 see -- I'm not going to run the dash cam again because you've
11 seen it.

12 He drove right up to where Mike was. You can't see
13 his lips on the dash cam. Mike said, go around, go F'ing
14 around. All right? That's what he said. And that's what he
15 expected him to do. He immediately jumped out of his squad
16 car. Did he turn on his lights, his flashers to say this is
17 now an official encounter? No. But he did have time to go
18 back to his car and grab his stick, that he extended. And then
19 you heard Mr. Morgan testify he was on him like a bull rush.
20 He was mad. He was mad that Mr. Morgan had not pleased him and
21 he didn't like Mr. Morgan.

22 You heard Jimmy Henley testify. And you know the
23 policies of the Wake County Sheriff's Department addresses this
24 directly. And it's tough, it's tough out there when people
25 aren't nice to you, they don't respect you. That's part of the

1 job. It's going to happen.

2 And what did Jimmy Henley say? Don't let yourself
3 get bigger than your badge, you be the big person, don't let
4 your temper take over, don't let that person take over you,
5 that's as much a part of addressing the citizen out on the --
6 in the field as anything else they do, don't escalate.

7 One of the rules that you have heard, an officer
8 should never needlessly escalate a situation. And you ask
9 yourself this question as you collect your factual quell
10 together of what happened. At that moment, did Officer Spivey
11 escalate? I submit to you he escalated needlessly.

12 He had so many options. First of all, within seconds
13 he had two other deputies with him. So we have three very,
14 very tall, very, very large armed and dangerous -- potentially
15 dangerous deputy sheriffs surrounding Mr. Morgan, 5'7, in his
16 truck.

17 They had so many options. Mr. Spivey himself could
18 have said, okay, I'll go around. He could have easily driven
19 around him. He could have done that, to the right or to the
20 left, but I think it would have been easier to go to the left.

21 You saw Mr. Henley's reenactment. And did you see
22 the exemplar vehicle of the squad car? It's the same kind of
23 car except it had that lower trimmings on it that a Wake
24 Sheriff's deputy's car didn't have. So it's just lower to the
25 ground. Did you see how easy it traversed that ditch?

1 So a big issue about the middle entrance. Mr. Ellis
2 said the middle entrance, nobody knew where it was. Well, it
3 was visibly a flat area. But from where Deputy Spivey's
4 perspective was with Mr. Morgan's truck, he had a cone that
5 went from the middle entrance all the way up to underneath the
6 guide wires to leave that field.

7 How many times -- use your common sense -- have you
8 been out on the highway, I-40 or somewhere, and you see a
9 highway patrolman parked in your direction and you go by him
10 and, the next thing you know, he's crossing the median and
11 you're going, oh, gosh, I hope he's not going to come get me?
12 But they are going to do something official. Maybe they're
13 going to answer a call. Maybe they're going to catch a
14 speeder. They use the ditches all the time. Common sense.

15 The issue of whether Deputy Spivey was boxed in and
16 trapped and obstructed and delayed is not true. The issue is:
17 Did Deputy Spivey escalate? Was he really upset with somebody
18 he was going to get eventually that he jumped out and bull
19 rushed Mike Morgan? We trust your common sense will answer
20 that question.

21 Just a couple of other things I remember. I don't
22 know why they caught my memory. He said John Combs, you know,
23 their expert who -- good man, trains law enforcement officers,
24 but his job in appearing in cases like this is to take the
25 version of the officers and consider it true. That's not an

1 objective review exactly, but that's his job. He's prohibited
2 from taking an opposite position from law enforcement. And so
3 he took the version of the officers, he assumed it was true and
4 he said they acted reasonably.

5 Did he consider what 12 members of the Wake County
6 jury considered? Consider the testimony of Charlie Johnson?

7 To get to that trial was quite an ordeal for
8 Mr. Morgan. He was shot. He was hospitalized. He was in
9 pain. He was literally dragged out of the hospital by the Wake
10 Sheriff's Department two days into his hospitalization, maybe
11 the third day, put in a wheelchair, taken down and put into a
12 Crown Victoria where they dragged him into the Victoria, they
13 knocked the cast off his leg that was protecting his wound in
14 his leg. And where did they take him? To the hospital? To
15 another hospital? No. They took him to the magistrate's
16 office and booked him in his wheelchair, in his hospital gown.

17 And that is the photograph, the mugshot that
18 Mr. Ellis showed you in his opening statement. Is that not
19 amazing, they would show you that mugshot? They booked him in
20 a wheelchair. Where was he going? What was the urgency of
21 doing that? And then, they took him up to the jail.

22 And then, later, you heard he was shipped to Central
23 Prison where, yes, there is better medical care than the Wake
24 County Jail, but he was there for two-and-a-half months; no
25 telephone, no visitors. He was treated like a death row

1 inmate. While he still didn't get the care that his surgeon
2 said he should have gotten. Because when his surgeon had saw
3 him in followup he was upset, his bandages weren't changed.
4 But that's not what this case is about.

5 The point is, what it took Mr. Morgan to get to this
6 trial, that criminal trial. And you recall Rob Lane
7 testifying, his attorney. Now, I don't practice criminal law.
8 Lawyers who do are very good at it. They should be, if they're
9 representing people whose freedom is at stake. And what did he
10 tell the prosecutor? Did he go begging for a plea bargain?
11 No. He told David Saacks, dismiss this case. Mr. Morgan was
12 not going to plead guilty to anything because he hadn't done
13 anything wrong or anything illegal. And if convicted -- and
14 you saw how they loaded up the charges.

15 By the way, did he ever get tried for resisting
16 arrest? What happened to the resisting arrest, the crime that
17 Deputy Spivey said he was committing and was arresting him for?
18 I recall even the warrants that were drawn by Ms. Moore --

19 MR. BALLEW: Ms. Bell.

20 MR. ZAYTOUN: Ms. Bell, excuse me, who was the
21 investigator, they didn't mention resisting arrest. They
22 ramped up the assault charges on the law enforcement officer,
23 two of them.

24 Now, there was a resisting arrest on one of the first
25 indictments, but it didn't even describe a crime; it had no

1 elements. You read it. It didn't say anything, which a
2 charging paper must articulate. But eventually, the
3 prosecutor, Mr. Saacks, dismissed that charge because they took
4 Mr. Morgan to trial on the serious charges.

5 And, in fact, after his lawyer said dismiss these
6 charges, they're not valid, and Mr. Saacks said no for whatever
7 reason, he went back to the Grand Jury a year later and got him
8 indicted for kidnapping.

9 So he goes to trial on the two aggravated indictments
10 for assaulting a law enforcement officer and the aggravated
11 assault based upon the 2005 single incident where Mr. Morgan
12 was convicted of two misdemeanor assaults, where the assaults
13 consisted of him going like that (indicating) to the officer
14 and as he did he touched the deputy that was to the left of
15 him. Technically, those were assaults.

16 But Mr. Ellis told you in his opening you're going to
17 find that he was convicted of having a knife. He was not found
18 guilty of having a knife. Otherwise, it would not have been
19 misdemeanor assault.

20 But he did serve his time for that in 2005. And
21 those two misdemeanors growing out of one incident formed the
22 aggravation to boot up the assault on a law enforcement officer
23 on the second indictment.

24 But Mr. Morgan went to trial on serious charges,
25 including kidnapping. And why did he do that? Because he

1 was -- believed innocent until proven guilty, he did not do
2 anything wrong, he knew they had done wrong to him. And 10 law
3 enforcement officers testified against him in that trial.

4 These three defendants and then the CCBI and the SBI
5 and all of those. But the three people that were there
6 testified. And all three of them have said they testified in
7 this trial and in their depositions the same way they testified
8 at the Wake County trial.

9 Now, here we are in a criminal trial in Wake County
10 involving assaulting Wake County deputy sheriffs. Charlie
11 Johnson. You heard Charlie Johnson testify, just like he was
12 sitting in that chair. He was this close to you. You had a
13 chance to watch him, to observe his face, his demeanor, how he
14 acted under cross-examination. And he testified exactly here
15 in front of you as he did in that criminal trial.

16 And I don't know if there's any kind of statistics
17 kept on it, but usually the jury -- you will have to do this.
18 You're instructed to go into the jury room. And the first
19 thing you do is you elect a foreman to speak for you. A
20 foreperson to speak for you if you have questions or something.
21 That usually takes, you know, a few minutes. In 20 minutes
22 they came back not guilty on all charges. And they heard the
23 same evidence you heard.

24 And Mr. Morgan faced a lot of active time. You know
25 they would have loaded him up if he got convicted. But he

1 said, no, I believe in the system of justice, I'm going to
2 trial, I'm innocent until proven guilty. And he believes in
3 now the civil justice system where now you, as I said, can
4 write the final chapter on justice in this case.

5 Yes, he was acquitted. Mr. Ellis said -- I wrote it
6 down -- "the evidence is going to show you that this hasn't
7 cost Mike a single dollar going forward." Did it cost him his
8 freedom? Did it cost him his right hand? Now, he has a right
9 hand. He showed you. And you saw, quite frankly, a very
10 talented surgeon. He was extremely fortunate that that surgeon
11 was there on-call, the trauma surgeon to do the surgery that he
12 did. But now he's got the equivalent of a crab claw.

13 He can pinch. He can hold something. He can hold a
14 glass. I'm not saying his hand was amputated, but for the rest
15 of his life he will live with that hand -- even the surgeon
16 himself said it is very iffy if he can do anything with this --
17 not an experimental surgery, but a highly specialized surgery,
18 which Mr. Morgan may or may not -- well, he's going to listen
19 to his surgeon. And if his surgeon says, well, I can't really
20 promise you too much -- he's learned to live with that hand.
21 And I think you saw that he's going to live the best he can
22 with it.

23 Do you remember the video they showed you of the Bass
24 Pro shop? Now, Mr. Morgan, he loved to hunt. He lived in the
25 country. He loved to hunt. He loved to fish. These are the

1 things he had a passion for. His passion was climbing trees.
2 And he can still -- I guarantee you, he will put those spikes
3 on and try to climb a tree.

4 And can he do it safely? Did the surgeon say that
5 would be a safe thing for him to do? You need the strength of
6 two hands, you need the strength of two knees when those spikes
7 go into the tree and you have to go up that tree. I wouldn't
8 do it. I mean, I'm not saying I'm afraid of heights, but 120,
9 30 feet up in the air with all that equipment and a chainsaw
10 when you're cutting branches and then you're very carefully
11 lowering those branches with ropes to the bottom, that's a lot
12 of physicality. He tried to do that after he got out of jail.
13 He tried to run his business.

14 He's tried -- he's not going to -- he's not going to
15 not fish with his son.

16 But you remember Mr. Ellis said, well, now,
17 Mr. Morgan, I saw you cast with your right hand. And Mike was
18 up there and he said, no, Mr. Ellis, I wasn't casting with my
19 right hand, I was casting with my left hand, but I was using my
20 right -- he can use his pinchers to brace the rod. He said,
21 can you roll back the tape and I'll show you? Mr. Ellis said,
22 no, we don't need to do that.

23 We are not contending Mike Morgan doesn't have a hand
24 and doesn't have some use of that hand. But he has the hand
25 that he showed you in front of the jury box for the rest of his

1 life.

2 So when Mr. Ellis told you it hadn't cost Mike
3 anything, it's cost him his passions, his happiness. It's cost
4 him a lot.

5 Let's flip this around. What did we produce to you?
6 What does your common sense tell you that we showed you about
7 what happened that day? I submit to you that we gave you the
8 truth. And we gave it to you based upon credible evidence and
9 the lack of evidence that they had control of. If there were
10 tire tread marks behind that truck showing that he had
11 accelerated, stomped on the accelerator with three armed
12 deputies around him, maybe we wouldn't be here. But who would
13 do that anyway? Who would do that?

14 Instead, Deputy Spivey, and Deputy Legan corroborated
15 it, had him within seconds a third of the way out of his truck.
16 And you saw Deputy Spivey. He's a big, big guy. He could lift
17 him out. Mike was not -- Mike was about 145 pounds back then.
18 He had him out and up. And when that truck was sitting there
19 idling Mike had his foot on the brake. And when Spivey bull
20 rushed him and lifted him out of that truck, his foot came off
21 that brake. And what did you see from their own expert, even
22 though he did this reenactment in a field that had no dirt, it
23 was all grass, all that, not the same kind of tires? That's
24 okay. It doesn't matter. Everybody agrees that diesel truck
25 is going to move forward on idle if your foot is not on the

1 brake. And when Spivey jerked him up so hard that his shirt
2 tore and he fell back down, Mike is trying to find the brake to
3 stop it, boom.

4 But before that first shot was fired, I want you to
5 think about everything Mr. Miller testified he did and saw. He
6 said he had time to see their faces interact. He had time to
7 see Mike's foot go back on the accelerator. He had to time to
8 see Mike put his hand on the steering wheel or on the gear
9 shift. I don't know. There is two different ways for them.
10 He had time to move along as the truck was moving. He showed
11 you that. He didn't need to shoot. It was unreasonable for
12 him to shoot.

13 And they are going to get up here and tell you, oh,
14 my gosh, that Deputy Spivey was about to die, get dragged to
15 death and I had to shoot to keep that from happening.

16 And, you know, Deputy Miller said we're trained to
17 shoot center mass, but I couldn't shoot center mass. In other
18 words, shoot at the body because Deputy Spivey was right there
19 on the other side of the door. So I shot at his foot and his
20 hand.

21 Well, he missed his foot, but he hit his left knee.
22 How did he hit his left knee at an angle going down? He didn't
23 need to shoot. It didn't need to happen. It didn't need to
24 get escalated. It was over, free to go until Deputy Spivey
25 escalated it.

1 Now, I cannot sit down without talking a little bit
2 about the law. And you're going to get the Judge's jury
3 instructions. You're going to have them.

4 Your Honor, I believe -- will the jury get the
5 instructions? Yes.

6 So -- but I'm not going to make a mistake about
7 trying to remember the instructions. I'm going to read from
8 them on what you're going to get. But you're also going to get
9 a verdict sheet.

10 Can you put that up on the screen now?

11 And you're going to be asked as jurors to answer a
12 series of questions. And they're yes-or-no questions. And
13 these questions go with each of the claims that this jury is
14 going to consider that have been brought.

15 The first one is: Was Mr. Morgan's Constitution
16 rights -- now, we are dealing with constitutional law, the
17 Fourth Amendment. It keeps us all free from unreasonable
18 search and seizures. It's a long body of law under our Bill of
19 Rights. That's the first question you're going to be asked, to
20 address Mr. Morgan's claim for unlawful search. And I'd like
21 to read the law that the Judge is going to tell you that you
22 consider.

23 This is what you're going to get. "The Fourth
24 Amendment prohibits unlawful vehicular searches without a
25 warrant by officers during traffic stops. Generally, an

1 officer cannot search a stopped vehicle unless the officer
2 obtains consent" -- no, no consent -- "secures a warrant" -- no
3 warrant -- "develops a probable cause to believe the vehicle
4 contains evidence of criminal activity." No. That element is
5 not met.

6 Is it a search incident to a lawful arrest?

7 Mr. Morgan was not arrested in that first go around. They
8 can't claim they searched incident to an arrest.

9 And was there any evidence that the vehicle was going
10 to suddenly flee away? They call that exigent circumstances,
11 where you have to stop it and search it before evidence
12 disappears. Not a single one of those elements are met.

13 And I submit to you that you should answer that
14 question yes, he was subjected to an unconstitutional search.

15 The next question: "Did Defendant Spivey violate
16 plaintiff's Constitutional rights by committing an unlawful
17 arrest?"

18 Now, I've kind of talked about that quite a bit. I'm
19 not going to go back over it. But do you remember Mr. Henley
20 talking about officers and how they shouldn't let their badge
21 get bigger than their badge, they should be the biggest guy on
22 the field, should control their tempers? He said that one of
23 the most abused charges in law enforcement is resisting,
24 obstructing, delaying. When officers are trying to come back
25 and justify what they did, they slap that charge on there.

1 It is a crime to resist and obstruct and delay an
2 officer. But from the evidence you've heard, did Mike Morgan
3 obstruct Mr. Spivey so that he was trapped, he couldn't leave
4 that field and return to his duties? I think your common sense
5 tells you no, he had not committed a crime.

6 Now, there's going to be conflicting testimony for
7 you to consider about what was said to Mr. Morgan. And
8 Mr. Morgan says not a single thing was said to him, such as
9 step out of the vehicle, you're under arrest for resisting and
10 obstructing an officer, with two other officers right there.
11 You're just going to have to weigh the credibility. Mr. Morgan
12 says all he knew is Spivey went around the back of his truck
13 and the next thing you know he hit it and he's pulling him out
14 of the truck. He used force on him.

15 Was that a lawful arrest? I would submit that you
16 answer that question it was not lawful and that Mike's
17 Constitutional rights were violated by committing an unlawful
18 arrest, and that you should answer that question yes.

19 Third question: "Did Defendant Spivey violate
20 plaintiff's Constitutional rights by using excessive force
21 during an arrest?"

22 Well, first of all, it wasn't a lawful arrest. Even
23 if it was, did Detective Spivey need to run up, grab Mr. Morgan
24 and start yanking him out of his truck, knowing the truck was
25 running, to arrest him? Did he not have other options? Wasn't

1 Legan right behind him with a TASER? Why didn't he just step
2 back and say, Mr. Morgan, come on out of the truck, turn it
3 off, we're going to have to TASER or pepper spray you or
4 something. There is three officers there. No. He didn't give
5 Mr. Morgan time to do anything but try to hold on for dear life
6 as he's pulling him out of the window of his truck.

7 I would submit that you answer that question, that
8 Detective Spivey violated plaintiff's Constitutional rights by
9 using excessive force during the arrest, yes.

10 Next question: "Did Defendant Legan violate
11 plaintiff's constitutional rights by failing to stop Defendant
12 Spivey from using excessive force during the arrest?"

13 Now, when we went back to the search, that is a claim
14 against Deputy Legan. He's the one that searched. He's the
15 one that said when you get a law degree, you can tell me what
16 to do, I'm going in. Isn't that interesting, how that
17 paralleled with what he did with Mr. Kyle, Mr. Morgan's son,
18 when he went to the house looking for Mr. and Mrs. Morgan?
19 Remember, he said there were two incidents?

20 But in that one, Deputy Spivey wasn't there. And
21 Legan was there. And Legan was going to search that house.
22 And he said step outside in your underwear and sit with these
23 female officers while he went through the house. No warrant,
24 no exigent circumstance, nothing. He's just going to do it.
25 And what did he tell Kyle? When you have a law degree, you can

1 tell me what to do.

2 So did Defendant Legan violate plaintiff's
3 Constitutional rights by failing to stop Defendant Spivey from
4 using excessive force during the arrest? Now, you might think,
5 hmm, that's a tough one, Mr. Zaytoun. Did you see how tall
6 Mr. Legan is and how big he is? And he said in the criminal
7 trial he's three feet behind Deputy Spivey when Deputy Spivey
8 was pulling on Mike. And he corroborated that Mike was
9 halfway -- a third of the way out of the window.

10 Under Wake County Sheriff's deputy policies and
11 training, you have a duty to intervene and stop one of your
12 fellow officers if they are effectuating an unlawful arrest and
13 using excessive force.

14 What would have stopped Deputy Legan? Just grabbing
15 Mr. Spivey and saying let's chill out here, we don't need to do
16 this, let's step back here, let's talk about this. What did he
17 do? He stood there. He did nothing. He had his TASER and he
18 did nothing. Could he have intervened? He certainly could
19 have intervened. Should he have intervened? Yes. He had a
20 duty to intervene at that point. But Deputy Spivey was running
21 that show at that point. And he didn't intervene. And I
22 submit, you should answer that question yes.

23 "Did Defendant Miller violate the plaintiff's
24 constitutional rights by using unjustified deadly force against
25 him?"

1 I've talked a little bit about Defendant Miller
2 already. I won't go back over that. But Defendant Miller --
3 even Mr. Sutton said -- he picked two seconds sort of as the
4 time when they say things happened quickly, but you remember
5 the testimony about what Deputy Miller did. First of all, he
6 goes around to the passenger's side and he's pulling his weapon
7 and he's aiming it into that passenger side. That's his first
8 response. Not a TASER, not a pepper spray. He pulls out his
9 deadliest of weapons. And then he proceeds to talk about all
10 that he observed happened during that time as he's moving, as
11 the truck is starting to move. It wasn't a split second.

12 Mr. Cloutier and Mr. Henley both said that Deputy
13 Miller should not have pulled the trigger. Remember when -- I
14 remember this. When Mr. Henley was doing the demonstration of
15 what he, himself, as an undercover officer, found himself
16 confronted with, he was in the back seat, undercover, his
17 fellow officer was in the front seat, had a suspected male
18 prostitute in the front seat, and he had us come out here --
19 and he didn't tell me we were playing musical chairs. So I sat
20 down here and Mr. Ballew sat down over here. And Mr. Henley
21 said in that encounter when he got out of the car to say, okay,
22 the gig is up, you're under arrest, what happened? That
23 suspect in the front seat reached for a little knife he had in
24 his pocketbook, I guess, and slashed across the front of Jimmy
25 Henley's shirt. Fortunately, he had on a lighter vest under

1 his shirt because he was undercover, but it literally cut his
2 shirt. He was directly assaulted by that individual. And he
3 said, I had my hand on the trigger, I could feel my hand on the
4 trigger, but I didn't shoot because if I had shot I might have
5 hit my fellow officer. So instead of using deadly force, he
6 managed to disarm the suspect and then placed him under arrest.
7 But he certainly had been assaulted with a knife. Mr. Miller
8 wasn't assaulted with anything. He didn't squeeze the trigger.

9 Now, why is that important? Because when you get to
10 the point where you consider whether a reasonable officer --
11 when confronted with what Mr. Ellis is going to tell you is the
12 totality of the circumstances, would a reasonable officer have
13 fired, you got to consider a lot of things about Mr. Miller,
14 including that he says he saw Mr. Morgan put his foot on the
15 accelerator and was accelerating as he was moving across.

16 Now, the recreation by Mr. Sutton showed an
17 accelerating vehicle. Use your common sense. And even
18 Mr. Sutton can see to this. It would be pretty darn hard to
19 run at almost a sprint as that vehicle is being accelerated and
20 gain target acquisition and fire, especially safely.

21 But when he showed the idling vehicle moving forward,
22 wasn't that, in your common sense and what you actually saw on
23 the screen, more likely than not what happened? The vehicle
24 was idling as Deputy Miller was moving and reflecting and
25 thinking what a reasonable officer should do, but, yet, he says

1 he was reasonable in shooting because he put his foot on the
2 accelerator.

3 So you've got to gauge his testimony about shooting
4 Mr. Miller on whether that's credible; that that vehicle was
5 under full acceleration. And I submit to you, the evidence,
6 the physical evidence, the credible evidence is that that
7 vehicle was not accelerating; and if it had been, Mr. Miller
8 would not have been able to -- he'd been out of breath before
9 he fired.

10 Their own evidence shows that Mr. Miller was not
11 shooting into an accelerating vehicle under full throttle.

12 You should answer that question yes, Defendant Miller
13 did violate Michael's Constitutional rights.

14 Now, this last one is framed against each deputy as:
15 "Did Defendant Spivey" -- and it goes on to restate the same
16 claim against Legan and Miller -- "violate plaintiff's
17 Constitutional rights by causing criminal prosecution to occur
18 against him without probable cause?"

19 Now, have you ever seen a legal team try so hard to
20 keep those officers away from the process of issuing that
21 warrant, getting that indictment, getting that second
22 indictment? They didn't have anything to do with that. That
23 was the investigator.

24 The Judge is going to tell you -- and bring this up
25 on the charge, jury instruction -- that if the prosecuting

1 agency is deceived at the front end by the officers and then
2 that carries its way through the pipeline of the system, which
3 is what that investigator did -- as you recall her testimony,
4 the investigator, was that she interviewed Miller and Legan.
5 Now, Spivey and Legan. She didn't interview Miller, I believe,
6 because he was the shooter. She interviewed Charlie Johnson.
7 And they tried every way they could make it appear that she
8 went in and just argued the case neutrally, argued Charlie
9 Johnson's position, but, yet, on the warrants that she typed
10 out and that were in the system when she went over to get the
11 warrants issued, the two witnesses listed -- and you can look
12 at those warrants; I won't bring them up now -- were Spivey and
13 Legan, not Mr. Johnson.

14 Have you ever heard the term garbage in, garbage out?
15 Well, that's what happened. She got their version and she took
16 it and it worked its way through the system. There was no
17 objective, neutral determination. The magistrate stamped out
18 those warrants, those two warrants.

19 And on those two warrants were the language
20 Mr. Morgan accelerated the vehicle. Where did that come from?
21 I asked her. This language on the warrant about accelerating
22 the vehicle, who told you that? She said, Deputy Spivey told
23 me that.

24 Now, is that what Mr. Johnson said? The eyewitness,
25 who testified in front of a Wake County jury; that found

1 Mr. Morgan not guilty. No. He said, he didn't hear the engine
2 roaring, he didn't see any dirt jumping up, he didn't hear
3 any -- the sound of acceleration, foot on the pedal, metal to
4 the pedal, metal to the metal, whatever it is. No, he didn't
5 see that at all. And that's what he told the jury in Wake
6 County. And that's what he told you.

7 But to believe Deputy Miller and Deputy Spivey and
8 Deputy Legan gave truthful information, which could have been
9 corroborated by controlling the crime scene that night -- they
10 could have said, okay, you say he accelerated and he dug in,
11 let's go out there and let's take pictures of those grooves.
12 No pictures because it didn't happen.

13 But their whole foundation for their case is that
14 Mike Morgan accelerated that truck when he was being yanked out
15 of the truck by Deputy Spivey who never should have been there
16 to begin with.

17 You should answer that question garbage in, garbage
18 out, causing criminal prosecution to occur. They caused it by
19 their information at the headwaters of that river. It ran all
20 the way through the criminal justice system until it finally
21 came to the day of reckoning in a jury trial in Wake County.
22 That's where the buck stopped.

23 But until then, oh, probable cause. Mr. Ellis is
24 going to tell you, probable cause by the magistrate, probable
25 cause by the Grand Jury. Where did that probable cause come

1 from? Where did that suit get made from? And -- what those
2 deputies put in it at the beginning.

3 I'm done. Sorry I've taken this long, but every
4 lawyer who makes an argument like this in a case that's
5 important doesn't want to go over there and sit down and say,
6 oh, I forgot something; gosh, I wish I said that.

7 I just want to say this to you: I'm going to say it
8 again, this is not an anti law enforcement case. We should
9 respect our law enforcement officers, but we should expect our
10 law enforcement officers to act according to their training, to
11 restrain themselves when they should because they're the -- in
12 this incident, they had the deadly force.

13 Each one of you drove here in a vehicle. Mr. Ellis
14 is trying to tell you that you got a deadly weapon under you.
15 Well, you know, under the right circumstances, any vehicle can
16 be a deadly weapon. But Mr. Morgan was not using his truck as
17 a deadly weapon out there. The deadly weapons were in the
18 hands and in the custody of those law enforcement officers.

19 And they left a legacy for Mr. Morgan that will last
20 him a lifetime. And Mr. Ballew is going to talk more about
21 that when he comes back and speaks with you at the end of this
22 case.

23 But your verdict, it will be final. It will last
24 everybody in this courtroom a lifetime. And I ask you to do
25 this: Each one of you, go to that place where nobody else can

1 go in you and ask yourself, what is the truth?

2 I know the truth. Have the courage. Like that Wake
3 County jury, stand up for the truth, even if it means ruling
4 against these three law enforcement officers and all of their
5 lawyers, have the courage to do the right thing.

6 Thank you.

7 THE COURT: Thank you, Counsel.

8 Ladies and gentlemen, the Court has made arrangements
9 for your lunch. I'm going to discharge you back to the jury
10 room. And when the food is finally set up -- and shouldn't be
11 more than a minute or two -- someone will knock on the door and
12 let you know. And we'll take a 45-minute lunch break.

13 Everybody stay seated as our jurors leave the room.

14 (The jury exited the courtroom at 12:31 p.m.)

15 THE COURT: So we'll close the courtroom -- rather,
16 the second floor. And when the jurors have finished their
17 meal, the Court security officer will let the spectators know.

18 Counsel, if you need to move about, just bear in mind
19 that the jury is in the break room.

20 There will be time to look at the exhibits another
21 time, I can tell you. So take your 45 minutes. And we'll see
22 you back at 1:15.

23 (The proceedings were recessed at 12:32 p.m. and
24 reconvened at 1:15 p.m.)

25 THE COURT: Let's get our jury in.

1 Thank you.

2 Who is going first?

3 MR. LITTLE: I am, Your Honor.

4 THE COURT: And second?

5 MR. LITTLE: Mr. Ellis.

6 THE COURT: Okay.

7 (The jury entered the courtroom at 1:16 p.m.)

8 THE COURT: You've heard a part of the plaintiff's
9 closing argument and now I invite defense counsel to come
10 forward and offer you theirs.

11 MR. LITTLE: Thank you, Judge.

12 Good afternoon, ladies and gentlemen. I'm Matt
13 Little, and I'm from Raleigh. And I have the privilege of
14 representing Josh Legan, Rickey Spivey and Casey Miller.

15 First thing I want to do is thank you for your time.
16 You guys all have families, you have jobs, you have lives.
17 You've taken time away from those things to be here with us
18 this week. I appreciate it and my clients appreciate it.

19 I usually am the most direct person in the room.
20 That's my nature. I'm going to be very direct with you-all
21 today. I will respect your time and I would appreciate if
22 you'd listen to me for the next 30 minutes, and then I will sit
23 down.

24 Judge Flanagan is going to talk to you about the law,
25 but your job as jurors is to use the common sense and find the

1 facts. That's your job. When you really get down to brass
2 tacks, your job is to decide what are the facts and who do you
3 believe.

4 I'm not going to spend a whole lot of time talking
5 about things Mr. Ballew said or Mr. Zaytoun said or anybody
6 else. I want to talk to you about what the evidence shows and
7 what we believe you should find at the end of the day.

8 So let's start off with where this story begins for
9 Mr. Legan or John Legan and Casey Miller.

10 Can you put up the first image?

11 They are sitting at a restaurant about 12 miles -- is
12 it coming up? I don't -- oh, there it is. Okay.

13 They're sitting there at that mall, that strip mall,
14 at a restaurant, 12 miles away. And they have worked in
15 western Wake County for a number of years. They've all been
16 trained. They've all gone through the BLET training. They
17 have had all of the stuff required to be deputies. And they
18 worked for Sheriff Donnie Harrison, who was the sheriff at the
19 time.

20 They also worked in that part of the county with
21 Ricky Spivey. And you have to understand, Wake County is one
22 of the biggest physical counties. The deputies are very spread
23 out. And those are the only three deputies on duty in that
24 chunk of the county.

25 And they hear Ricky Spivey come on the radio and say,

1 hey, I'm making a traffic stop. And unlike his normal course
2 of conduct, he says I'm stopping Mike Morgan and Charlie
3 Johnson. And that language means something, ladies and
4 gentlemen. It means that he's putting their names out there to
5 his fellow law enforcement officers, letting them know who he
6 was with. And why did he do that? Because he knows about Mike
7 Morgan.

8 Now, if we could go to the next page, the CAD alert,
9 please.

10 You all have seen this.

11 Sorry; we got a little bit of lag time.

12 There we go.

13 That's the opening page of the CAD alert.

14 And if you can go to the next page, please. The
15 shot.

16 That is, indeed, Mr. Morgan in several of his
17 mugshots; two different ones.

18 And if we can go to the language page, please.

19 And if you-all can see that, it says, "This is the
20 residence of Mr. Morgan, who is known to have weapons and be
21 assaultive of law enforcement."

22 They are not the only ones on the CAD system, ladies
23 and gentlemen. The fire departments are on the CAD system.
24 EMS people are on the CAD system. Anybody that goes to Michael
25 Morgan's residence, or that field across from it, is warned you

1 need to be careful with this gentleman.

2 Why are they warned?

3 If you can put Exhibit 93A up, please. There we go.

4 They are warned because Mr. Morgan has had a long
5 history of violent encounters with people, including law
6 enforcement.

7 Now, you heard testimony from the deputies about what
8 they knew about him. Mr. Morgan assaulted a State trooper and
9 a Wake County deputy and was convicted; served 150 days for
10 that.

11 You also heard that he had an encounter with a repo
12 man who showed up to repossess one of his vehicles and he shot
13 an AK-47 rifle at him.

14 You heard other testimonies from the deputies about
15 things he's done in the past. Mr. Morgan has a hot temper.
16 And we'll talk about that in a little bit. It's obvious he
17 does, both from his history and from the way he behaved on the
18 day we are here to talk about.

19 He's somebody they need to be careful of. So Josh
20 Legan, Deputy Legan, and Casey Miller hear this and they think,
21 okay, we're going to stop dinner right now, we're going to get
22 in our cruisers and we're going to drive there.

23 And I'm not going to play the video of the transit
24 from the mall to the field. Yes, they were driving fast. Why
25 were they driving fast? Because they were concerned about

1 Ricky Spivey; they did not want him alone with Charlie Johnson
2 and Michael Morgan in that field.

3 There was one high-speed driving instructor in this
4 courtroom this week, ladies and gentlemen. One and only. And
5 that's Josh Legan. Mr. Cloutier is not a high-speed driving
6 instructor. Mr. Henley is not a high-speed driving instructor.
7 No other witness in the case or anybody who set foot in the
8 courtroom is. And Mr. Legan testified that he's the one who
9 instructs other State troopers how to drive safely at high
10 speeds. They got there safely. No one was hurt. It was not
11 reckless. And he's the only one in a position to even say.

12 Now, when they got there, about a half mile from the
13 scene they cut off the lights and they cut off the sirens. So
14 they arrive and they assess the situation. All right. Now, if
15 they jump out of the vehicle with their guns drawn or with
16 TASER or something and rush out there -- they've got a
17 situation when they arrive that appears calm.

18 And you can see them -- and if you can cue up the
19 video -- when they get there, the situation is calm, which is a
20 good thing; not a bad thing. So they get there.

21 And you'll see them in just a moment here.

22 (Video played in open court.)

23 MR. LITTLE: They get out and they walk across to
24 help figure out what's going on, okay?

25 Every bit of testimony is that they had a

1 professional, calm interaction with Michael Morgan and Charlie
2 Johnson. Mr. Morgan said it. Deputy Spivey said it. Deputy
3 Legan said it. Deputy Miller said it. That's a good thing.
4 They were not doing anything to needlessly aggravate the
5 situation.

6 When they're there, Mr. Morgan is asked for his
7 driver's license and he's asked for the registration of the
8 vehicle. Mr. Morgan knows he does not have a valid driver's
9 license; it has been revoked. How does he know that? Because
10 he was stopped by Deputy Legan in 2011. It was revoked from
11 that stop, but he had been stopped in March of 2013 by the Cary
12 Police Department and given another ticket for having a revoked
13 license. So not less than three months before Mr. Morgan was
14 told, you don't have a good license. He knew it.

15 Mr. Morgan also did not have a registration for that
16 vehicle. He didn't have it titled in his name. He didn't have
17 the tags in his name. He didn't have the insurance in his
18 name. And he did not have it registered. So he's asked for
19 the registration. He says it's in the console. Deputy Legan
20 says, okay, I'll go get it from the console. And he did, went
21 and looked in the console, said it's not there. Mr. Morgan
22 said look in the glove box. He looks, it's not there. Those
23 are the only two places in that vehicle where Deputy Legan
24 looked.

25 And one of the things that we're going to talk about

1 is the instructions that Judge Flanagan is going to read to
2 you. And I'm going to read a small section of the language
3 that she'll read to you-all in a little bit. And this is about
4 the search.

5 And she will read: "Probable cause to search a
6 vehicle exists where the known facts and circumstances are
7 sufficient to warrant a person of reasonable prudence in the
8 belief that contraband or evidence of a crime will be found."

9 All right. So that language says that Deputy Legan
10 can look where there's evidence of a crime. In this particular
11 case, in 2013, driving with no registration was a misdemeanor
12 offense under Chapter 20. Dave Cloutier said it was an
13 arrestable offense. Mr. Henley said it's an arrestable
14 offense. The deputy said it was an arrestable offense.

15 Deputy Legan is allowed to go look for the one place
16 where that registration would be located according to
17 Mr. Morgan. So there is no problem with that. But even more
18 basically, he did not search that vehicle. He just didn't do
19 it. If he had searched the vehicle thoroughly, he would have
20 been looking for weapons. CCBI did indeed search the vehicle
21 and did document what they found.

22 And if you could put up the picture, please.

23 All right. Mr. Zaytoun is right that they did search
24 the vehicle after Mr. Morgan had been arrested. And they did
25 so and they documented what they found. There's a picture of a

1 knife there in that picture. They did find it. They took a
2 photograph of it.

3 Next picture, please.

4 On the other side there's another knife that they
5 found on that seat.

6 And the third picture.

7 And there's this wooden club in the door that
8 Mr. Morgan claims is a wheel chuck.

9 If Josh Legan had been searching that vehicle, one of
10 the things he would have done, knowing about Mr. Morgan, is
11 look for weapons. If he had found weapons in the vehicle, he
12 would have kept them until the encounter was over. He didn't
13 find any of these things. You know why he didn't find any of
14 these things? Because he wasn't looking.

15 He just simply did not perform a search on that
16 vehicle. It did not happen. He went looking for the one thing
17 he was looking for, in the place Mr. Morgan told him it was
18 located, and he didn't find it. Why didn't he find the
19 registration? Because it didn't exist.

20 Now, if you can, please, go to the aerial photograph.

21 So everyone who's testified about the traffic
22 encounter so far has said that this was a calm, professional
23 encounter.

24 And we've heard an awful lot about this middle
25 entrance to the field. And we've seen this aerial photograph

1 over and over again. Mr. Morgan testified Friday that
2 thousands of vehicles had transited into the middle entrance.
3 Well, if thousands of vehicles transited the middle entrance,
4 there would be worn tracks there, not tall grass. Deputy
5 Spivey did not know it existed.

6 Was there a culvert pipe there? Yep, there was. Did
7 Deputy Spivey know it was there? No, he didn't. He came in
8 the southern entrance of that field, which is a gravel,
9 well-marked entrance. It's where he knew to come in. He came
10 up the field and met with these two guys. But the idea that he
11 deliberately chose not to exercise this other entrance is just
12 not supported by any evidence. It wasn't clearly visible to
13 him and he just didn't know it was there.

14 So Mr. Morgan -- if you can go to the next one, the
15 screen shot, please.

16 Mr. Morgan was shown this same video we've been
17 talking about and said, okay, mark on the screen where the
18 middle entrance is.

19 Give us just a moment.

20 And the funny thing was, after looking at the film
21 for about 10 minutes, he put the entrance in the wrong place.
22 So even Mr. Morgan doesn't know where it is all the time. And
23 he's lived across that road for over a decade.

24 So we've got this situation, now we're turning to
25 Deputy Legan and Deputy Miller. They arrive at the scene. And

1 after the traffic encounter is over, what do they do? They
2 calmly start walking back to their vehicle.

3 If we can play the next section of the video, please.

4 (Video played in open court.)

5 MR. LITTLE: And if you watch, at the time they're
6 walking back to the vehicle, Mr. Morgan is down at the other
7 end of the field having a tantrum. And he's angry and he's
8 upset and he's putting the gas to the floor in that vehicle.
9 But are Deputy Legan and Deputy Miller doing anything about it?
10 No, they are not. If they had a vendetta to get Mr. Morgan, if
11 they were out to get him, as has been suggested, they had
12 multiple opportunities to do so.

13 When he drove that vehicle with a revoked license,
14 that was a misdemeanor; they could have arrested him and put
15 him in handcuffs.

16 When he drove that vehicle without a registration,
17 that was an arrestable offense; it's a misdemeanor, they could
18 have put him in handcuffs. They chose not to do so. They gave
19 him traffic tickets instead.

20 Now, everything is calm at this point. Nobody is
21 doing anything. The next major event occurs when Mr. Morgan
22 makes a choice.

23 And if we can play the next section, please.

24 (Video played in open court.)

25 MR. LITTLE: And you've seen this video over and over

1 again -- probably 15 times so far this week, so I apologize for
2 playing it again, but as you watch, Mr. Morgan backs up, comes
3 forward and stops.

4 Stop the video, please.

5 When you look at that screen, you can see the rear
6 axle of the truck and you can see the front axle of the truck
7 and you can see Deputy Spivey's cruiser in between them. That
8 truck is completely across that path and he is blocking Deputy
9 Spivey's exit from the field.

10 And if you'll put up Exhibit 150, which is the
11 statute.

12 Mr. Cloutier here sat there the other day and said
13 that, oh, that -- he's not really blocking him, that's just a
14 trick angle from the camera. I'll leave it to you-all, you can
15 see what the video shows.

16 The statute says -- and I apologize since I can't
17 read it from over there -- "If any person shall willfully and
18 unlawfully resist, delay or obstruct a public officer
19 discharging or attempting to discharge a duty of his office, he
20 shall be guilty of a Class 2 misdemeanor."

21 Mr. Morgan was the only one in that truck. No
22 argument the truck was mechanically defective; that the
23 throttle didn't work, that the steering wheel didn't work, the
24 brakes didn't work. He chose to stop that truck where he chose
25 to stop that truck. And he meant to block Ricky Spivey. No

1 other reasonable explanation for his conduct. He was angry and
2 he was acting out.

3 Now, Mr. Johnson has given a good deal of -- a good
4 bit -- ah, a good deal of testimony about what he claimed he
5 seen and heard. And there was one piece of testimony from the
6 very end of Mr. Johnson's testimony that I would like to read
7 to you.

8 If you can put it up on the board, please.

9 Mr. Johnson was asked:

10 "QUESTION: All right. You told Mr. Ballew just a
11 second ago that Deputy Spivey was facing away from you so you
12 couldn't hear what he said, correct? Is that right?

13 "ANSWER: Yes, sir.

14 "QUESTION: So if he gave Mr. Morgan an order to get
15 out of the truck or told him he was under arrest, you wouldn't
16 have heard that, if he said it, right?

17 "ANSWER: No, sir."

18 So Mr. Johnson is about 20 feet behind Deputy Miller,
19 looking slightly uphill. Deputy Spivey is on the other side of
20 the 3500 Dodge. And he's yelling at Mr. Morgan, get out of the
21 truck, you're under arrest, okay? Mr. Johnson admits he's not
22 in a position to hear any of those words so the only witnesses
23 to that conversation are Mr. Morgan and Deputy Spivey. And you
24 have to choose who you believe.

25 Would he have gotten out of his car and said to a

1 person that he believed committed a crime you're under arrest?

2 Of course, he would.

3 Would he have said to a person in that vehicle get
4 out of the vehicle after he told him he's under arrest? Of
5 course he would.

6 So, perhaps, the single biggest -- and one more
7 thing. I want to hit on this before we go any further.
8 There's been all this testimony, all this dancing around about
9 the issue of the ASP baton. An ASP baton is an extending steel
10 rod, about 20 inches long, weighs about a pound. Okay? If you
11 hit somebody hard in the head with that thing, it will leave a
12 mark.

13 And so one of the things I asked Dr. Erdmann at his
14 deposition -- if you can put the record up; and you-all heard
15 his testimony -- was:

16 "QUESTION: Look, you're a board certified,
17 highly-experienced trauma surgeon; you specialize in facial and
18 head wounds. You examined that guy's head yourself on July the
19 5th of 2013 at Duke University Medical Center. Did you see any
20 sign at all; any lumps, any scratches? Any marks at all?"

21 And the answer is:

22 "ANSWER: No."

23 The emergency department physician examined
24 Mr. Morgan's head, not a mark. The triage nurse examined
25 Mr. Morgan's head, not a mark. Dr. Erdmann examined his head,

1 not a mark. Dr. Beretta, Dr. Erdmann's resident, examined his
2 head, not a mark.

3 Mr. Morgan in his discovery deposition claimed he's
4 been hit in the head twice with a baton, not a mark. So if
5 Mr. Morgan is willing to be untruthful under oath about that
6 topic, what else is he not telling the truth about?

7 So if we can, please, turn to the Sutton photo.

8 Now, probably the single biggest factual dispute in
9 this case that you-all have to resolve is to decide why did
10 that vehicle move forward. Everybody agrees it moved forward.
11 Did it move forward because Mr. Morgan was dragged off the
12 brake or did it move forward because he stepped on the gas?

13 That's why Mike Sutton was hired, to answer that
14 question. So he and Mike Whitley, the gentleman in this
15 picture, went out to the field and they took a laser survey.
16 And they got really good physical data from that field.

17 Next picture, please.

18 And they were trying to figure out a couple of
19 different things. One, they wanted to understand the slope of
20 the field. If it's a real steep downhill slope the truck will
21 move forward at a certain pace; if it's uphill, it'll do
22 something else. So you can see, they took about 50 different
23 survey marks to obtain really good data from that field.

24 Next picture, please.

25 And what they then did is created that topographical

1 map.

2 If you can stand it a little bit, please. Thank you.

3 So now we know what the field is like.

4 Oh, there we go.

5 It's important for a couple reasons. One, Mr. Sutton
6 needed to figure out how far does that vehicle travel from
7 where it stopped in front of Deputy Spivey until where it comes
8 to rest on the wood line. And he ends up measuring it at
9 40 feet. That's two full truck lengths, which means the truck
10 moved its length and then its other length again. So we now
11 know how far the truck moved.

12 So then, the next question is: Okay, everybody has
13 said that after Mr. Morgan's shirt tore and he fell back in
14 that car, the truck moved and the events of the shooting were
15 like that (indicating), a second or two, okay?

16 And we know from where the shell casings are that the
17 shooting occurred about 20 feet from where the truck began to
18 move, okay?

19 If we can go to the next picture, please.

20 So what Mr. Sutton -- this is one of the CCBI
21 pictures. What he did is, he figured out -- that picture is
22 the final resting place of the truck.

23 Next picture.

24 And you can see where he looked and made sure he
25 understood where the shell casings were, which are ejected from

1 the gun to the right, as he shoots the gun, five to seven feet.
2 So that means from where that shell casing is there, Casey
3 Miller was seven feet back to the left when he pulled the
4 trigger on that gun.

5 Next picture, please.

6 And you can see, both of the shell casings are
7 basically in a straight line from the rear axle of the truck.
8 So he's -- at the time he shot that gun, he's five to
9 seven feet to the left of where you see those evidence flags.

10 So what Mr. Sutton did, because he's a scientist and
11 an engineer and an accident reconstructionist, is he said,
12 okay, scientific method, I look at the data, draw associations
13 between the data, I form a hypothesis and I test my hypothesis.

14 Okay. I'm going to figure out what are the two
15 stories being told here. Story number one, that Mr. Morgan was
16 dragged off the brake, the vehicle slowly eased forward and
17 Deputy Miller shot him. Story number two, that Mr. Morgan hit
18 the gas, dragged Deputy Spivey and Deputy Miller shot him to
19 try and disable him.

20 So what Mr. Sutton did is, he did these two tests
21 that you-all saw this morning.

22 If you can play the first one, please.

23 This is what the truck looks like when you let it
24 idle forward.

25 (Video played in open court.)

1 MR. LITTLE: Did I do good, Madam Court Reporter?

2 Okay. I promise not to talk while it's on.

3 So it takes four seconds for the truck to move
4 seven feet under idle. It takes seven-and-a-half seconds for
5 the truck to move the 20 feet, to the point where Deputy Miller
6 shot, under idle. There has been no witness that said that
7 much time took place in this event.

8 Please, play the next video.

9 (Video played in open court.)

10 MR. LITTLE: All right. That's the test under
11 throttle. It takes just a fraction over two seconds to cover
12 the 20 feet if you step on the gas. And you-all remember the
13 testimony of these witnesses. Everybody said it was quick. If
14 you step on the gas, it happens quickly. If you don't step on
15 the gas, it does not happen quickly.

16 So Mr. Sutton said, in my expert opinion, as a
17 Master's level mechanical engineer, the physical evidence from
18 the CCBI, the witness testimony and everything, this event is
19 consistent with Mr. Morgan stepping on the gas. That was his
20 expert opinion. And that's what happened.

21 Now, you-all have to go back and decide -- and I'm
22 going to talk to you about two legal claims here. One I've
23 talked a little bit about, the search claim. Mr. Ellis is
24 going to talk to you about the probable cause issue, use of
25 force issues and stuff like that. And I'm not going to spend

1 your time repeating what he's about to say to you.

2 I've already talked to you about the search issue.
3 Deputy Legan testified he didn't search the vehicle; if he had,
4 he would have found those items and he would have impounded
5 them until the encounter was over. It just didn't happen.

6 The other issue is this issue of bystander liability.
7 And one of the other things that Judge Flanagan is going to
8 read to you is, "In certain situations bystander officers have
9 an obligation to intervene to prevent constitutional violations
10 by a fellow officer."

11 And she's going to give you a couple things that you
12 have to find and the plaintiff has to establish by the
13 preponderance of the evidence.

14 "First, that Deputy Legan knew that Defendant Spivey
15 was violating plaintiff's constitutional rights to be free from
16 unlawful arrest or from excessive force."

17 He had to know it. He had to understand that this
18 arrest was unlawful. How would he have known that as he's
19 running up from his vehicle and Deputy Spivey is encountering
20 him? To his knowledge, Deputy Spivey could have said you're
21 under arrest, get out of the vehicle. The two of them are
22 engaged with each other when he arrives.

23 "Second, Defendant Legan had a reasonable opportunity
24 to prevent the harm."

25 In other words, in this really fast event he had to

1 have time and space to do something.

2 "And third, the Defendant Legan chose not to act to
3 prevent the harm."

4 And once again, there's no evidence that he went
5 through the thought process and thought, hey, I'm going to do
6 something or I'm not going to do something.

7 And I told you a little while ago I wasn't going to
8 talk about opposing counsel a whole lot, but I have one
9 observation to make. Mr. Zaytoun sat there and talked about
10 the six years that his firm has represented Mr. Morgan and this
11 lawsuit has been pending for multiple years and we've been here
12 a week and a couple days. Deputy Legan sat up there on that
13 stand for over an hour on direct examination and they asked him
14 two questions on cross. Is that the best they have? They
15 spent three years suing him so they could ask him one or two
16 questions?

17 Now, the jury instructions that Judge Flanagan is
18 going to read you talks about the burden of proof. And for
19 almost all of the issues in the case, the burden of proof is on
20 the plaintiff.

21 And when you-all were sworn in, you agreed to take
22 the law from Judge Flanagan that she will instruct you and
23 carry out your duties as a juror. And the instructions will be
24 that the plaintiff must prove, the plaintiff must prove more
25 likely than not that the things he says happened happened.

1 That not only the facts that he says happened, but that these
2 constitutional violations occurred.

3 And I ask you respectfully, at the end of the day,
4 when you go back and deliberate on these two issues that I'm
5 talking about, the search and the bystander liability claim,
6 that you enter the box for "no" on those things.

7 Thank you for your time.

8 THE COURT: Thank you, Counsel.

9 And now other counsel for defendants will come
10 forward.

11 MR. ELLIS: Thank you, Your Honor.

12 I want to talk to you for just a little bit this
13 afternoon. I'm going to try not to repeat some of the things
14 that you've heard from Mr. Little; may do so.

15 I think lawsuits -- most people come to court
16 thinking, when they're going to serve on a jury, that lawsuits
17 are involving disputed facts and, again, as everybody has said,
18 having the jury try to sort out those disputed facts; and then,
19 have those facts, once they've been resolved, applied to the
20 law and we come up with a verdict.

21 I think one of the issues in this case that you've
22 heard about that is disputed is, again, what caused the truck
23 to move. Now, I want to talk to you about what the evidence
24 has shown in that case. Because what caused the truck to move
25 is Mr. Morgan. Mr. Morgan is driving the truck, we all know

1 that. He is being arrested.

2 I want you to just think about this -- and make sure
3 everybody understands that what Mr. Sutton did was with math.
4 And math is usually a black or white equation. There's not a
5 lot of gray in math. So what did he do? Again, he says, we
6 know where the truck started, we know where it stopped and we
7 know where the shell casings were, we know how far the shell
8 casings eject, so if it stopped here, the shell casings are
9 here, then that means Deputy Miller is here. And if the truck
10 starts there, from there to here is 20 feet. Pretty sensible,
11 pretty logical, pretty mathematical.

12 And therefore, you say, well, okay, how long does it
13 take the truck to go 20 feet? And what did all of the
14 witnesses say? Again, all of the witnesses -- Mr. Morgan
15 Friday afternoon on three occasions said:

16 "QUESTION: How long was it from the time the truck
17 started to move until Deputy Miller discharged his weapon?

18 "ANSWER: A second or two."

19 And so as Mr. Sutton showed, if you accelerate -- and
20 this was putting it all the way down, if you accelerate, then
21 in about two-and-a-half seconds it goes 20 feet. It brings you
22 to the point where the shots would have been discharged.
23 Thousand one, thousand two. All the witnesses says it happened
24 really fast.

25 If it idles -- we saw what happens when it idles. He

1 said the average time was seven-and-a-half seconds. Thousand
2 one, thousand two, thousand three, thousand four, thousand
3 five, thousand six, thousand seven. None of the witnesses said
4 that much time elapsed from the time the truck started to move
5 until the shots were discharged. So the math tells us that it
6 is in two-and-a-half seconds. And the only way the truck goes
7 20 feet in two-and-a-half seconds is with the accelerator being
8 pressed down.

9 When Mr. Combs testified, counsel on
10 cross-examination said:

11 "QUESTION: You've accepted the version of the facts
12 as presented by the deputies?"

13 Now, he said:

14 "ANSWER: Yeah. I'm not here to judge who is telling
15 the truth and who's not. I am looking at it from their
16 perspective. And if I look at it from their perspective, what
17 are the conclusions I make?"

18 And then, when I asked him on redirect, I said:

19 "QUESTION: Well, let's see what truly is in
20 dispute."

21 Because we all have heard all of the witnesses talk
22 about the totality of the circumstances. And as we went
23 through that we heard, that the totality of the circumstances
24 were not in dispute. Similarly, what's not in dispute?

25 The plaintiff, Mr. Ballew, I'm assuming is going to

1 come up next, and I think earlier today, or when this trial
2 started, said they would be asking for millions and millions of
3 dollars. That's a lot of money, obviously. And they're going
4 to ask for those millions and millions of dollars based on
5 what?

6 Who was Mr. Morgan before July 5th? He was somebody
7 who had been in two car wrecks; torn rotator cuff; torn bicep;
8 compression fractures; a motorcycle accident; a
9 falling-out-of-the-tree workplace accident; 17 broken bones;
10 anxiety I think through most of his life, taking Xanax to
11 address that; taking pain medication for all of these injuries
12 and other things that he had. That's who he was before.

13 He says -- and his counsel will tell you that, well,
14 he must have been hit with this ASP baton over the head, but he
15 said Friday afternoon, well, it was either the doorjamb or the
16 ASP baton, I'm not sure.

17 If you're asking for millions and millions of
18 dollars, you need to present credible evidence that you're sure
19 of.

20 You heard Mr. Little just say that the three medical
21 doctors at Duke University -- nobody found evidence of any head
22 or trauma injury. Mr. Morgan says, well, you couldn't see it,
23 but my wife could tell, she could feel the bumps on my head.
24 Well, I'm not sure where the wife has been this week. Now, we
25 heard something about her father and having some oral surgery

1 or something. This case has been pending for three years.

2 Dr. Erdmann didn't come to court and testify, but
3 arrangements were made for Dr. Erdmann to be videotaped for his
4 deposition.

5 Mr. Johnson, he didn't come to court and testify, but
6 arrangements were made by plaintiff and his attorneys to
7 videotape his deposition that could be shown to you.

8 If these bumps and knots truly existed and
9 Mrs. Morgan truly felt them, just ask yourself: Wouldn't she
10 have come to court in some fashion, either on that stand or a
11 videotape deposition like apparently everybody else was, and
12 then presented that evidence to us if it is truly the evidence,
13 if it's truly credible?

14 We know Mr. Morgan has not been to see the doctor
15 since the fall of 2013 for his hand or his knee. We know that
16 in May of '14 he's working at Evergreen. And, of course,
17 Evergreen, you've heard, is a place where he got into an
18 altercation. And this is, again, about 10 months or so after
19 this encounter. He tells you, well, I went to work there with
20 my buddy and -- but I quit because my attorney got my house
21 arrest conditions changed so I could go back and run my own
22 business. Well, then, we find out, no, you got in an
23 altercation with a coworker, you got in an altercation with a
24 customer, and you got fired.

25 But you had a workplace accident, you say; and you

1 went to the doctor's office. And the doctor's office on May
2 the 5th said you had full range of motion of your lower
3 extremities; that means the knee that you got shot in you had
4 full range of motion in, just like your right.

5 The week after that, May 16th, you go back to the
6 emergency room for this workplace fall. The doctor says your
7 gait is stable. And everybody saw Mr. Morgan move around this
8 week. I don't think there is any real contention that he is --
9 has any difficulty walking or anything of that nature. But
10 certainly in the medical records showed that he didn't have any
11 problems; that his strength was five of five in his right leg
12 and in his left leg.

13 We also heard that his physical lifestyle -- and I'm
14 talking about this because Mr. Ballew, Mr. Morgan's lawyer,
15 again, is going to come to you and he's going to ask you to
16 reward his client with a substantial amount of money.

17 So his physical lifestyle before and after, how has
18 that changed? He still hunts duck. He still hunts dove. He
19 still hunts deer. He still hunts squirrel. He said squirrel
20 you use a rifle; if you use a rifle, you have to get in the
21 stand, you've got to get eight feet off the ground. You didn't
22 hear any evidence about any difficulty doing any of that. He
23 does fish.

24 And the Bass Pro shop video shows what it shows. And
25 if there's any contention that Mr. Morgan is anxious and can't

1 go out into the public, well, for whatever reason that day he
2 was able to go out there with Mr. Johnson and his wife and buy
3 a fishing rod and a fishing reel and a lot of other things he
4 said. Did he appear to have any difficulty or impairment
5 whatsoever moving around, manipulating the rod and reel with
6 his hand, casting? No.

7 He says he still rides an ATV in his field.

8 He talks about his business. We kind of heard about
9 the mysterious Mike's tree business somewhat. He's not making
10 a claim, and there's no evidence at all that's been introduced
11 that he couldn't make a living, he couldn't make a go at it
12 because of this. So he hasn't told you he's lost any money
13 up-to-date. He's not told you, well, I can't work going
14 forward because of this injury. So I can't do anything, so
15 reward me for that. So there has been no evidence that he's
16 impaired or unable to work.

17 He got a job with Evergreen doing landscaping
18 business, operating heavy equipment that, unfortunately, he
19 lost because of some of his behavior on the job.

20 The tree business. He said, well, when I did get
21 back at it after Evergreen in 2014 and 2015, I was able to
22 climb a 100-foot tall tree, use a chainsaw, use a pole saw, use
23 ladders, use stepladders.

24 Mr. Morgan's attorney this morning, I think, said,
25 but he can't do it safely. Well, in the year of 2014 and 2015

1 that he did it, did he ever say, well, I tried to do it and I
2 fell or I tried to do it and I dropped a piece of equipment or
3 I tried to do it and I couldn't handle my tools? No. All he
4 did was say, yeah, I could still get up a 100-foot tree and use
5 all the same gear that I used before this ever happened.

6 He's going to tell you that he's got an emotional
7 impact on him from all of this. And what is that? Mr. Morgan
8 actually didn't say a whole lot about how this has emotionally
9 impacted him. But what did he do? He brought Kyle Cox in to
10 testify about, well, we used to throw the baseball together, we
11 used to throw the football together, we used to play
12 basketball; not so much basketball, it wasn't his favorite, but
13 we did all those things.

14 And then, what is the most telling thing about the
15 credibility of Mr. Morgan? These are simple questions. You
16 said your son dropped out of high school. When did he drop
17 out? And you saw him on the witness stand, he couldn't tell
18 you when his son dropped out of high school. What grade was
19 your son in when he dropped out, Mr. Morgan? I don't know, I
20 can't tell you, all I was worried about was my defense.

21 Well, I'm talking about in 2014 and 2015. And this
22 is the one witness from your family that you're going to bring
23 to court as justification for a multi-million-dollar award and
24 you can't even tell the jury when he dropped out of school,
25 what grade he was in? He couldn't even tell you what school he

1 attended.

2 And just ask yourselves, if this is such an emotional
3 impact on somebody, shouldn't they be coming to you from the
4 witness stand and say, you know, I tried to help my son stay in
5 school, I encouraged him to stay in school, he was in ninth
6 grade at Wake Roosevelt High School; I remember going talking
7 to his teachers, trying to encourage him, you know, so he would
8 stay in school? None of that came from Mr. Morgan.

9 On this issue about damages, about awarding money,
10 the burden of proof is on the plaintiff. And I'm talking about
11 this because they're going to talk about it. The Judge's
12 instruction is going to say, look, that's part of the case, but
13 you don't consider that at all until you've considered whether
14 or not the burden of proof on liability has been established by
15 the plaintiff.

16 So let's talk about that now.

17 Again, they tried to say, well, Mr. Combs, these
18 facts are disputed, you shouldn't even consider them. Well,
19 what is not disputed?

20 It's not disputed that Mr. Morgan was assaultive of a
21 highway patrolman and a Wake deputy before and he was convicted
22 of it. The criminal jury never heard that.

23 The CAD alert, C-A-D alert that Mr. Little showed you
24 a minute ago, that's undisputed. The criminal jury never heard
25 that.

1 Shooting at a tow truck operator who is trying to
2 repossess your car, that's undisputed. The criminal jury never
3 heard that.

4 Mr. Lane has represented him six or seven times in
5 other criminal cases. The jury never heard that. That's
6 undisputed.

7 The day of this incident Mr. DiMarino said Mr. Morgan
8 told him he was trying to stop his bad boy ways. That's
9 undisputed, the criminal jury never heard that.

10 The day of going to take the debris -- now, I think
11 there's probably some type of suggestion that Deputy Spivey had
12 it out for Mr. Morgan. But Mr. Morgan said, I've never filed
13 any written complaints against Deputy Spivey; he's never even
14 stopped me. And so what did the suggestion become this
15 morning? Oh, they had it out for the plaintiff.

16 Well, let's talk about, again, one of the reasons --
17 multiple reasons why he was stopped on July 5th. This is from
18 Mr. Johnson.

19 "QUESTION: When you passed Deputy Spivey's patrol
20 car, did you or Mr. Morgan say anything to each other?

21 "ANSWER: No, I didn't say nothing. But if I recall
22 right, I'm sure Mike was talking about he's probably going to
23 mess with us because the tree limbs in the back of the truck,
24 they were stacked above the cab, and -- and -- and hanging
25 outside, which, I mean, they were strapped, but, I mean, the

1 load -- I mean, I'm sure going down the road it didn't look
2 good to a police officer."

3 "QUESTION: Did you say that Mr. Morgan said he's
4 probably going to mess with us?

5 "ANSWER: Yeah. I mean, we figured that he was
6 probably going to mess with us because of the way the load
7 looked."

8 That's Mr. Johnson's sworn testimony.

9 Now counsel this morning said, well, Mr. Morgan was
10 driving normally to take this load of debris. Is it normal to
11 drive with a revoked license for a year-and-a-half? Is it
12 normal to drive a truck for months and months with an expired
13 registration? Is that normal behavior?

14 You remember the driving with license revoked?
15 Mr. Morgan testified, I thought my lawyer was going to get all
16 that fixed for me, not my fault, not my responsibility, not my
17 responsibility to know whether or not I have a valid driver's
18 license.

19 The expired registration? Well, that was this
20 Richard Swain guy, his fault, not my responsibility.

21 Yeah, the Cary police officer did stop me in March of
22 2013, just a few months before this, and, yeah, I didn't have a
23 license then, yeah, my registration was expired then, not in
24 dispute.

25 Well, when he said that I said the truck was owned by

1 my boss -- and I've never worked for Mr. Richard Swain, that
2 was my son. My son said dad is the boss man. So the officer
3 must have misunderstood what he said. Not my fault.

4 Again, what's going on in the traffic citations?
5 There is no questions about that. Everybody is behaving the
6 way they should behave at that point in time.

7 Deputy Spivey, described by the plaintiff himself as
8 professional. And then what happens? Then Mr. Morgan gets
9 some tickets and he doesn't like them. And he thinks, I'm on
10 private property, I'm on my land, I can do what I want. So he
11 starts doing the doughnuts. And he does that. And we seen in
12 the dash cam -- when you're looking at the deputies behind, are
13 they sitting there getting ready to go? No. Everybody is just
14 kind of milling around talking. Deputy Spivey enters the field
15 at the southern end to begin and he is exiting at the southern
16 field to end. None of these facts are in dispute.

17 Deputy Spivey is leaving. Nothing is unusual. Now,
18 the -- I'll just talk briefly about this, but -- I have to.
19 The middle entrance. Again, Mr. Morgan testifies, well, I can
20 kind of tell because I know where it's at, but I don't -- I
21 don't know if anybody else could.

22 Friday afternoon could Mr. Morgan even tell where the
23 middle entrance was? He put his points here and then he said,
24 nope, that's in the wrong place, let me start all over again.

25 Again, this is credibility. If you say that there's

1 a middle entrance, but you, the owner of the land, the guy who
2 maintains it, can't look at a picture and tell where it is, but
3 then try to project that there's this middle entrance that's so
4 well marked that thousands of trucks and cars have gone over
5 it -- but we saw the picture of that, none of the grass is beat
6 down, none of it is mowed down, there is no tire tracks there.

7 So what does then Mr. Morgan do? He goes to the end
8 of the field where he has an unobstructed view of Deputy
9 Spivey. He makes three intentional, purposeful moves with that
10 truck. He backs it up, he pulls it ready forward and he puts
11 on the brakes right in the middle of the path for one reason,
12 to obstruct Deputy Spivey.

13 What does he do once he stops? And excuse my
14 language, but this is what the evidence is. He says, "You
15 ain't going no fucking where. This is F'ing private property."
16 This is Mr. Morgan stating that I'm in charge.

17 Now, counsel this morning said he wasn't trapped.
18 Well, let's look at the statute, 14-233. I know you've seen it
19 before, but I want to make sure we all understand what the law
20 in North Carolina is versus what Mr. Morgan and his counsel may
21 say it is. And we all have heard it before. And there it is
22 in front of you. And let's see if the word "trap" appears
23 someplace. If any person shall willfully and unlawfully
24 resist, delay or obstruct -- resist, delay or obstruct -- then
25 you have committed a crime.

1 And one of the things we'll talk about in a minute is
2 the severity of this crime.

3 But you're going to have an issue before you: Were
4 the plaintiff's constitutional rights violated by an unlawful
5 arrest?

6 Again, you people probably all feel like you
7 qualified for the BLET class after this week and last week.
8 Probable cause is what is required to make an arrest. Probable
9 cause -- and the judge is going to explain it in her
10 instructions, but it's not beyond a reasonable doubt, it's not
11 even by the preponderance of the evidence, which is what your
12 burden is in this case, it is less than 50 percent. It is just
13 having some reasonable belief that the crime has been
14 committed.

15 And why does it not say trapped? We're talking about
16 not some of us being in a parking lot and somebody gets in the
17 way of the other person and says, you know, I don't like the
18 color of your truck, I'm going to sit here and block your way.
19 Resist, delay or obstruct -- and it's not quantified. It
20 doesn't say by five minutes or by 30 seconds or makes you take
21 a detour by 45 seconds or, well, I'm okay to do that as long as
22 you can drive through the utility pole and the guide wire exit.
23 It just says resist, delay and obstruct. And why? Because --
24 and this is from the State of North Carolina Supreme Court,
25 talking about this statute. This is the case of State vs. Lee.

1 It goes all the way back to 1971.

2 THE COURT: Sustained.

3 MR. BALLEW: Objection.

4 THE COURT: Sustained.

5 MR. ELLIS: You've got a situation where it's not a
6 private person trying to obstruct or delay another private
7 person. It's somebody trying to obstruct or delay a law
8 enforcement officer.

9 And what that law was put in place for was to prevent
10 the exact type of thing that the plaintiff did on July 5th. So
11 when you're asked the question on your verdict about were
12 Mr. Morgan's constitutional rights violated by an unlawful
13 arrest by Deputy Spivey, all of this undisputed evidence is no,
14 that they were not violated because probable cause did exist.

15 Now, the next issue that you'll consider as far as
16 constitutional rights being violated is the use of force. Now,
17 Mr. Cloutier here and Mr. Henley, basically their entire
18 opinions were based on them assuming that no, there was no
19 delay or obstruct. Because they all -- when I asked questions
20 and when Mr. Little asked questions -- said yes, if the truck
21 was going straight and they both -- and this is Mr. Henley;
22 well, I misunderstood you first time, Counsel, yeah, but I
23 agree, if the truck is sitting here and the deputy's patrol car
24 is here, it's going to hit. There is no dispute about that.
25 That's not a disputed fact. So they all acknowledge.

1 And the law that we've talked about, 15A-401, it
2 talks about what you have to do to make an arrest. You have
3 probable cause to make an arrest and then either a person can
4 submit, which this didn't happen, or the law enforcement
5 officer is authorized to use force to effect the arrest. Mr.
6 Cloutier, Mr. Henley acknowledged, yes, they can use force.

7 The statute says -- well, can they go inside of a
8 vehicle to use force to effect an arrest? The statute says
9 yes, they can. The witnesses all said yes, they can.

10 All Deputy Spivey did was put his hands on the
11 plaintiff and try, as this statute permits him to do, to effect
12 his arrest. His constitutional rights were not violated.

13 None of those facts are in dispute.

14 Of course, we have to address the claims against
15 Mr. Miller, Deputy Miller. Now, first of all, one of the
16 things said this morning is he was kicked off the force.
17 Deputy Miller was straight about that, he was not kicked off
18 the force, he resigned. Why did he resign? He made a dumb
19 mistake. But did he try to pin it on somebody else or blame
20 somebody else? No. He went and accepted the fact that what he
21 did was something that he shouldn't have, told the sheriff
22 about it, and resigned.

23 And what did he also tell you? That he's now come
24 back into law enforcement, the Criminal Justice Standards
25 Commission of North Carolina has said you are acceptable to be

1 a law enforcement officer. Sheriff Harrison, who was his
2 sheriff at the time, his employer, was there at the hearing.

3 But when looking at what Deputy Miller did and what
4 he's confronted with, again, what's in dispute and what's not?
5 Everybody, Mr. Henley, Mr. Cloutier -- everybody says this
6 truck can be a deadly weapon.

7 The law in this statute, as we've talked about
8 multiple times, says that when confronted with a deadly weapon,
9 when confronted with bodily injury to you or to someone else
10 and it's imminent, that you are authorized to use deadly force
11 to prevent that from happening.

12 The judge is going to talk about, well, when you
13 consider all of this, as far as the objectively reasonable --
14 and "objectively reasonable" just means not what I personally
15 may think in a situation, but what would someone who is
16 reasonable looking at the situation think.

17 And the judge will say, well, you look at the
18 severity of the crime. Again, resisting, delay and
19 obstruction. This is not just painting graffiti on the wall of
20 a building. This is not just going into a warehouse after
21 hours and stealing some property. This is taking an
22 intentional, willful action against a law enforcement officer.

23 And the State of North Carolina, like every other
24 state, has said you've got rights as an individual, but they
25 don't trump your ability or give you an ability to go delay and

1 obstruct law enforcement officers. So the severity of the
2 crime, it's against a law enforcement officer.

3 The immediate threat to the officer. This is the
4 opportunity -- again, the truck's a deadly weapon. Deputy
5 Spivey and Mr. Morgan -- Spivey has given multiple commands;
6 Mr. Morgan has not complied with any. The truck is moving.
7 Everybody understands that.

8 Now, they dispute why the truck moved, but the truck
9 moved for one or two things. Mr. Morgan intentionally puts his
10 foot on the accelerator or if his foot comes off -- and his
11 foot, obviously -- if it's on the brake, it has to come off the
12 brake to get on the accelerator. It's just common sense.

13 He says, no, my foot came off the brake because I was
14 getting pulled up by my seat. Every witness, including
15 Mr. Morgan, says I got pulled up, my shirt ripped, and I came
16 right back down. So did his foot come off the brake for half a
17 second and then go right back on the brake or did his foot come
18 off the brake and go right down on the accelerator?

19 Which of those comports with the math that you heard
20 from Mr. Sutton?

21 There is no question that Mr. Morgan was responsible
22 for making that truck move. There, likewise, is no question
23 that when this deadly weapon moved that Deputy Spivey could
24 have been dragged underneath it. And there is no question that
25 the law in North Carolina says that permits you to use deadly

1 force.

2 So did Deputy Miller violate any constitutional
3 rights of Mr. Morgan? The answer to that is no.

4 Now, the last claim that I'm going to talk about is
5 this malicious prosecution. And all of the evidence, of
6 course, is that this was presented to multiple parties. It was
7 presented to Magistrate Judge Cronk, who found probable cause
8 to believe. It was presented to another magistrate, Judge
9 Phillips; I find probable cause to believe. None of these
10 deputies went to the magistrate and testified and said just
11 listen to us, we'll tell you what happened, you issue these
12 warrants based on what we're telling you, nobody else. They
13 didn't go to the district attorney's office and say draw these
14 charges up this way or that way.

15 The Grand Jury heard the case.

16 Investigator Bell, she said I gave a summary of what
17 not only the deputies told me, but what Mr. Johnson told me.
18 And then based on all of that -- and you'll see from the law
19 that the judge will tell you -- that that's probable cause and
20 you cannot find that somebody has maliciously prosecuted you if
21 there's probable cause, unless they deliberately mislead or
22 recklessly disregard the truth somehow.

23 Has there been any evidence that any of these
24 deputies talked to the assistant DA or to the DA or to the
25 magistrate judge? Did they do anything to deliberately mislead

1 in having the warrants issued or the Grand Jury indictments
2 issued? No.

3 At the beginning of the case, in the opening
4 statement, I talked about responsibility. Who was responsible
5 for July 5th? Who was there driving on the road without a
6 valid license? It's not Deputy Spivey that created that
7 situation. Who was there driving with an expired registration?
8 Who's driving a truck that the license plate is hidden on the
9 back? All of that is the responsibility of the plaintiff. Who
10 strapped down the debris, but even strapped it down in such a
11 way that any police officer would look at it and think it's
12 funny? It's not anybody on the defendant's side. Who
13 deliberately moved their truck three times to place it directly
14 and obstruct Deputy Spivey? That was done by the plaintiff.

15 This is a case where, obviously, you've got issues
16 involving law enforcement officers and you've got a plaintiff.
17 We ask that you consider everybody in this case, not only
18 consider what's happened to Mr. Morgan, but consider what's
19 happened to everybody else in this courtroom.

20 We ask that you look at the evidence, the undisputed
21 evidence, the undisputed material evidence and find a verdict
22 that there were no Constitutional violations committed by any
23 of these defendants against Mr. Morgan.

24 Thank you for your time.

25 THE COURT: Thank you, Counsel.

1 We'll take a brief, 10-minute recess at this point.

2 Everybody stay seated as our jurors leave the room.

3 (The jury exited the courtroom at 2:19 p.m.)

4 (The proceedings were recessed at 2:20 p.m. and reconvened
5 at 2:30 p.m.)

6 THE COURT: Counsel, depending on Mr. Ballew's length
7 of time -- and whatever it is, it is. But I may go into
8 instructing the jury without a break. And if that's the case,
9 please know that when I'm done instructing I always look out
10 and say are there any matters that haven't been considered
11 previously that you'd like to note on the record. And, you
12 know, hopefully we've caught everything, but if something
13 appears, then that's your time to come up. Are you
14 understanding me?

15 MR. ELLIS: I just want to make sure that I do.

16 THE COURT: Okay.

17 MR. ELLIS: As far as any instructions, any
18 objections we've previously made we don't need to make again?

19 THE COURT: Absolutely not.

20 MR. ELLIS: Okay.

21 THE COURT: If you think I've misspoke.

22 MR. ELLIS: Understand.

23 THE COURT: Now, if you think that something so
24 altering has happened, you know, during the course of my
25 instructions, that is just a glaring issue, and you want to

1 bring it to my attention right away, I'm not telling you you
2 can't.

3 MR. ELLIS: That's fine.

4 THE COURT: But just know that I'll give you that
5 opportunity at the end.

6 MR. ELLIS: Thank you, Your Honor.

7 THE COURT: Sure.

8 And are you all set up, Mr. Ballew, the way you want
9 it?

10 MR. BALLEW: All set up.

11 THE COURT: So let's just keep talking since we're
12 waiting for Mr. Zaytoun.

13 Say it's 5:00 o'clock when I finish, what I'm going
14 to do is send them to the jury room and tell them you need to
15 go elect your foreperson. And while -- and then, your
16 foreperson needs to send me a note on your behalf as to whether
17 you wish to continue in your deliberations this evening or come
18 back tomorrow.

19 MR. BALLEW: We're fine with that.

20 THE COURT: And that'll be your chance, if you
21 haven't already, to look at the exhibits, while we're waiting
22 for the answer.

23 Okay. All right. Looks like everybody's back.
24 We'll get our jury in.

25 Counsel, you should have the clerk's exhibit list --

1 MR. LITTLE: We do, Your Honor.

2 THE COURT: -- sanitized to go back to the jury.

3 (The jury entered the courtroom at 2:31 p.m.)

4 THE COURT: And now I invite counsel for the
5 plaintiff to come to the podium.

6 MR. BALLEW: Thank you, Your Honor.

7 Good afternoon, everyone. Thank you for listening so
8 attentively to the entire trial. We very much appreciate all
9 of your patience, all of your attention to this very, very
10 important case.

11 And you may have seen me over here -- what I do
12 during closing arguments, I find it's very helpful to me, is I
13 make these note cards when I hear opposing counsel say
14 something that is either taken out of context, unfair or just
15 flatout wrong. I try to write them as fast as I can. And I'd
16 like to go through some of these with you before I do my part
17 of the closing argument.

18 But before I even look at one of these, I just want
19 to address right up front: You heard a lot of stuff about who
20 Mike Morgan is. You heard Mr. Ellis and Mr. Little tell you,
21 as they have done the entire trial, what kind of guy is this.
22 And you know what the undertone of that is? Is that he doesn't
23 deserve anything.

24 Well, let me tell you something. The Constitution of
25 our country says that it protects everyone, every person. It

1 doesn't matter if you're rich. It doesn't matter if you're
2 poor. It doesn't matter if you're educated. It doesn't matter
3 if you're not. It doesn't matter if you're a lawyer and live
4 in some nice neighborhood; doesn't matter if you live on a dirt
5 road in a trailer. It doesn't matter if you don't even live in
6 a home. It protects all of us the same.

7 Mr. Zaytoun mentioned we're in this incredible
8 courtroom. Right up there, one of those phrases, one of those
9 paintings is a very, very famous case for the State of North
10 Carolina, Bayard vs. Singleton. That case dates all the way
11 back to the founding of this country. And it actually impacts
12 the United States Constitution. I mean, we're talking about
13 the Bill of Rights that our forefathers put into place.
14 Because the Constitution creates a very powerful government.
15 And we need government to do a lot of things for us, such as
16 police. But the Bill of Rights had to come right along with it
17 before we would agree to become a part of this country. And
18 the Bill of Rights said we're going to give the Government
19 power, but we're going to reserve for ourselves sacred and
20 inviolable rights.

21 So it doesn't matter if you've got a past when you
22 were younger that some people might disagree with or be
23 unfamiliar with. It doesn't matter if you have a kid that
24 dropped out of high school. The Constitution protects all of
25 us. And that's what this case is about.

1 So to my note cards. And I'll try to do this fast.

2 It struck me that -- how much time did Mr. Ellis
3 spend talking about Mr. Morgan and how he's not really injured,
4 even though he had his hand blown apart and he's got a bullet
5 in his knee right now. He's not really injured. He hasn't
6 gone to the doctor in years. He still can climb a tree, if he
7 needs to. He's had all these prior injuries. We had the Bass
8 Pro shop video. Where in the world did that come from, by the
9 way?

10 Why did he spend so much time talking about all of
11 those things and so little time talking about what happened in
12 the field? Well, I would submit to you, it's because they know
13 the truth about this case. And they've known it all along.
14 And that is, there were constitutional violations that happened
15 out there. No reasonable officer should have done these things
16 and acted these ways. And they know that you're going to find
17 that. And so when you find that, you're going to be asked and
18 instructed by the Court -- you're going to be asked to decide
19 damages issues.

20 And I don't know if you remember now all the way back
21 when the Court was picking jurors and doing the jury selection
22 process, but everybody was asked whether anybody had a problem
23 with the civil justice system which involves money damages.
24 That's what the civil justice system is, is money damages, if
25 you've proven your case. And everybody said, no, we're totally

1 fine with that.

2 They know that's what this case is about. So that's
3 why they spend all this time talking about it. And we'll
4 address the damages issue that Mr. Ellis raised. I'll address
5 those, but that's the first note I had; why so much time.

6 These are in no particular order, by the way.

7 Jasmine is going to help me a whole lot during this
8 thing, just like she has during the whole trial.

9 Jasmine, can you please pull up Defense Exhibit 30,
10 which is the -- what they call the CAD alert. How many times
11 have you heard that, the CAD alert? Well, I was waiting the
12 whole trial to see if they would actually show this to you.
13 And I waited during closing to see if they were going to show
14 it to you. It never happened.

15 I'm going to have you stop right there.

16 The very first page. They call this the CAD alert.
17 And they want to make it seem like, to you, that this was a big
18 bulletin. I mean, it says Information Bulletin in big, bold
19 letters on the front. And they want to make it seem like this
20 is the information that was broadcast out to all the law
21 enforcement and firefighter world about Mike Morgan and how
22 dangerous he was.

23 But, wait a minute. I'm going to walk over here.
24 What does it say right here? What's that date? August 29th of
25 2013. Wait a minute. That's more than a month after our

1 incident.

2 And if you scroll down, Jasmine.

3 "Threat to law enforcement officers." They didn't
4 show you this page or ask you to read it. It's all about the
5 shooting incident, our case; where they write in there, "He
6 dragged an officer with the truck, he's a threat to officers,
7 he tried to kill an officer with the truck, he's incarcerated
8 right now awaiting his trial."

9 Scroll down to the next page, please, if you don't
10 mind.

11 Mr. Zaytoun already pointed out there's his mugshot
12 with his hospital gown on after our case.

13 Go down, please.

14 Keep going.

15 They didn't show you this page, which is another
16 photocopy, August 29th of 2013. So you know that wasn't an
17 alert at the time.

18 Keep scrolling.

19 This thing's got a lot of pages in it. Keep going.
20 Oh, I'm sorry. Go right back up.

21 Now, here's a document -- I'm going to walk over here
22 again. Pardon me. Here's a document that's part of this CAD
23 alert that put everybody on notice. They never read what was
24 down here. "The subject is extremely dangerous. He was shot
25 by a Wake County deputy."

1 All of this, except for one page, which is that
2 computer screen shot that we showed you, all of what they call
3 the CAD alert -- and it's in evidence as Defense Exhibit 130,
4 and you can look at it when you're back in the jury room --
5 it's all about after our incident. But they want to make it
6 seem like -- trying to, kind of, sneak one past the goalie
7 here -- that this was information these officers had in mind
8 when they were dealing with Mr. Morgan.

9 Okay. Next one down.

10 You can take that one down, Jasmine.

11 Middle entrance, that Spivey had no idea that it was
12 there. I'm going to wager that I don't even need to pull up
13 the dash camera for you when they -- when Miller drives right
14 up, and you can go slow motion, and you can literally see the
15 flat middle entrance that they now for the first time --
16 Mr. Little admitted to you for the first time, yeah, it did
17 have a culvert underneath it, which is pretty significant
18 because what did Deputy Spivey say on the witness stand? He
19 tried to tell you that was the brush that he saw which, I
20 guess, flew out 100 yards from Mr. Morgan's truck when he
21 caught air and jumped up into the northern end of the field.
22 It just flew all the way down there and landed like two potted
23 plants on either side of each other and those dark spots were
24 the brush. But now Mr. Little doesn't even believe his own
25 client and says, yeah, that's a culvert there.

1 So the nose of Mr. Spivey's patrol car is sitting,
2 what, 20 feet away from this middle entrance. So he says, I
3 didn't even know it was there. Well, they were sitting and
4 standing 20 feet away from it -- the -- Mr. Morgan and
5 Mr. Johnson told you -- in fact, Mr. Johnson specifically --
6 because I asked him the question. I said, would it have been
7 obvious to anybody standing right there at the traffic stop
8 that, hey, right there is a flat driveway, I can just drive
9 right over to get in and out of this field? And he said, oh,
10 yeah, it'd be no problem at all, it would be obvious.

11 Deputy Miller resigning from Wake County Sheriff's
12 Office. All I'll say about that is, they did a lot of work to
13 have him explain to you how he lied and violated his oath as a
14 law enforcement officer. And then, he said that after a couple
15 or three days his conscience got the better of him so he went
16 in and said, hey, boss, Sheriff Harrison, I've been untruthful,
17 I've just got to step down.

18 It's up to you to decide whether you believe that.
19 How do things happen in the real world, though? Do you think
20 they happen that way? Or do you think that more likely than
21 not happened is a supervisor found out why there was damage on
22 that car and they had a little meeting that went something like
23 this: Casey, this can go one of two ways, you can either go
24 ahead and resign or we can let you out of here. You just have
25 to decide how it happened.

1 "You ain't going no F'ing where." So two things
2 about that. Of course, that's what they say is kind of their
3 whole case, is Deputy Spivey's claim that Mike Morgan looked
4 out across his window and yelled to him, "You ain't going no
5 F'ing where."

6 So two things about that. One, Mr. Zaytoun said use
7 your common sense. Mr. Little said use your common sense.
8 Even if you had a history with law enforcement in your younger
9 days, who in the world would yell over in an open field, mind
10 you, where you can't block somebody in, they can just drive
11 right around you if they want, who would yell over to an
12 officer, fully loaded in his patrol car, with two officers
13 right on the side of the road also fully loaded in their
14 separate patrol cars, you ain't going no F'ing where? Does
15 that make any sense?

16 And half the time they also say that Mr. Morgan said,
17 go the F around me, this is private property, you got plenty of
18 room. Half the time they say he said that. Those two do not
19 fit together. Why in the world would someone say something
20 like that? Why in the world?

21 Second thing about this is -- and this is where you
22 got to look a little deeper to figure out the credibility,
23 where it belongs and who deserves it in this case.

24 Deputy Legan, very polished witness, a highway
25 trooper now, very polished on the witness stand, but what did

1 the evidence at the time show?

2 You-all are going to have the dash camera footage in
3 the jury room. I won't even pull it up for you now. This is
4 something you can do together, if you want to.

5 You hit play on it and watch when the encounter is
6 over, Mike is all the way down at the southern end of the field
7 halfway done with his doughnuts, Deputy Spivey drives all the
8 way down. And when Deputy Spivey pulls up, where is Legan --
9 where are Legan and Miller? You can see them casually walk to
10 their car. And if you watch that rearview shot, Deputy Legan
11 sits down in his car and shuts the door of his car before
12 Spivey even comes to a stop. And yet, he told you on the
13 witness stand, I heard Mr. Morgan yell, "You ain't going no
14 F'ing where," over his diesel engine, the powerful engine of
15 Deputy Spivey's Dodge Charger patrol car, the engine of his own
16 Dodge Charger patrol car, the engine of Miller's patrol car
17 and -- I don't know -- about 100, 150 yards' worth of distance
18 down the field. And he said, I heard him say that, too.

19 They got their stories straight.

20 Mr. Ellis said there's no evidence in this case that
21 Mike Morgan is impaired or that he can't do things safely
22 anymore. You haven't heard any evidence of that. Well, maybe
23 he was out of the room when Dr. Erdmann's testimony was played,
24 who was accepted by the Court as an expert, who said he has
25 permanent disfigurement, permanent injury, permanent

1 limitations and he can no longer safely perform any of the tree
2 work that he was doing. Dr. Erdmann told you that.

3 We didn't just rely on Mike to come in here and tell
4 you that and say, hey, you just got to believe me because I
5 brought a lawsuit. So, I guess -- I mean, I guess he was out
6 of the room when that evidence happened.

7 Tracy Morgan, Mike's wife, don't -- I would just
8 respectfully request that you not take the bait on what has
9 been told to you. There's a process. There are rules in our
10 system. Tracy Morgan could have been called just as easily by
11 the defense if they wanted her here. Don't take the bait and
12 think anything about that. She's equally available to both
13 sides, just as every witness under subpoena is. If they wanted
14 her here and they actually wanted to challenge her and hear
15 what she had to say, they could have brought her, too.

16 Mike's head injury from this incident. Counsel
17 characterized the evidence. I am characterizing the evidence
18 when I'm up here right now. It's your job to remember the
19 evidence as you remember it.

20 I hope, and I submit, that when I sit down you will
21 find that I have fairly characterized the evidence as it came
22 in during this trial. And regarding the head injury, it just
23 did not come in the way Mr. Ellis has characterized it.

24 Mr. Morgan testified he didn't know what hit him, it
25 was either the baton -- which, by the way, they admit that

1 Deputy Spivey slapped that thing out and extended it at
2 basically the moment he got out of the car; and just
3 mysteriously, they have no idea what happened to it. Where did
4 the thing go? It's extended out? Where did it go?

5 Anyway, Mike said he didn't know. He could not be
6 sure what hit him in the head. He said it could have been the
7 doorjamb, but Spivey was coming down so it could have been the
8 baton as well. He didn't know.

9 Charlie Johnson said, hey, in fairness, I saw him
10 extend that thing out, just like Legan did, but he said, in
11 fairness, I couldn't see what his hand did when it moved down
12 because the truck was between us. He said that in fairness.

13 Mike said, and testified to you, that his attention
14 in the hospital was on the fact that his hand had been blown
15 apart by a gunshot and his knee had been blown apart by a
16 gunshot. He still had a bullet in his knee and he had to be
17 rushed into trauma surgery basically within hours of getting to
18 Duke, which Dr. Erdmann told you that's pretty fast in the
19 medical world. Sorry that his attention wasn't on his head
20 more than his hand and his knees to figure all of that out.

21 And if he had, if he had done that, if he had taken
22 pictures of it, if he had documented it, then they would just
23 do what they've already done and say, well, discount that
24 because he's just trying to build his defense.

25 They say, oh, that shows you that Mike Morgan is

1 lying; if he would lie about that, he would lie about anything
2 in this case. Well, you have to decide whether that's actually
3 the evidence that he testified to.

4 But if we're on the subject of untruthful statements
5 and untruthful testimony, there was actually a witness here who
6 admitted to you that he did make untrue statements in this
7 case. That was Deputy Spivey. When I cross-examined him and
8 said, isn't it true that you gave this -- an interview to SBI
9 that night, Agent Gay, and isn't it true that I showed you that
10 interview at your deposition and made you confirm for us, so
11 there was no confusion, that everything in that interview
12 summary is something you told Agent Gay? And he said yes, that
13 is correct.

14 And he told him in that interview that night that he
15 had dealt with Mike Morgan a hundred times in the past 10
16 years, they knew each other well. And I said, and that wasn't
17 true, was it? And he said no, that was untrue, that was a
18 heat-of-the-moment statement.

19 And I don't know if you recall, but I ended my
20 cross-examination by saying, well, can you even tell us how
21 many more heat-of-the-moment, untrue statements that you made
22 in this case? And what was his answer? I cannot.

23 I actually wrote down two cards here on the search by
24 Deputy Legan. And I'll just combine them into one point. This
25 is another don't be fooled, don't take the bait. Somehow they

1 want to say out of this side of their mouth, yeah, he opened
2 the door, yep, he went in there and lifted up the console, yes,
3 he looked in the glove box, all the while, by the way, his eyes
4 are everywhere inside the passenger compartment of the car.
5 They want to tell you that, but on the other side they want to
6 say that search just didn't happen. It didn't happen. Well,
7 if that's not a search, I, with an actual law degree -- I don't
8 have any idea what one is. But you'll get the law from the
9 judge. She will tell you when a search is allowed, when a
10 search isn't.

11 And the other thing to pay attention to is: They
12 admit -- if you listen carefully, they admit there was no
13 lawful basis for a search of that truck. He was not under
14 arrest. There cannot be a search incident to arrest if you're
15 not under arrest. There was no warrant. Didn't have a search
16 warrant. There was no consent. There was no exigent
17 circumstance.

18 And they told you just a moment ago that everything
19 was totally calm, everyone was behaving the way they were
20 supposed to. It's undisputed that Mike and Charlie weren't
21 even inside the truck. They were outside the truck, standing
22 there where they had been told to stand; just calmly standing
23 there. Nobody made any quick movements towards the truck.
24 Nobody did anything -- what they might call furtive movements
25 in some of the law you read. Nothing like that.

1 The best they've got is to say, well, his
2 registration was expired and so that's an arrestable offense in
3 2013. And even though he wasn't under arrest, he just got a
4 traffic ticket, it was somehow okay for the officer -- when
5 he's told you don't have permission to go in my truck, to go in
6 there and look for the registration because that's evidence of
7 a crime. Well, ask yourselves this: Why do you need to search
8 for evidence of a crime that they say they already knew had
9 been committed; that they already knew the registration was
10 bad; that Deputy Spivey was already in the car typing up the
11 citation? Do you need to go looking for evidence of a crime
12 that you're writing a citation for? No, you do not. It's an
13 unlawful search.

14 The RDO statute.

15 Jasmine, could you go to the jury instructions. This
16 time for the unlawful arrest instruction.

17 So as this is being pulled up -- Mr. Ellis showed you
18 an exhibit that was introduced; that's the statute for RDO -- I
19 wanted to show you actually the Court's real instruction.

20 Right there, it is. It would be -- it says, "Arrest
21 by Defendant Spivey." So page 20.

22 I wanted to show you -- because her Honor gave us an
23 advance copy of these instructions. That's why we can pull
24 them up on the screen. These are the same ones that will get
25 printed for you.

1 Can you scroll down, please, Jasmine?

2 I'm not even going to bother telling you everything
3 that's in there about probable cause and how you can't arrest
4 without probable cause and all that statute, 15A-402, that they
5 show repeatedly. None of it even applies if you don't have
6 probable cause to arrest.

7 But I wanted to show you -- if you go up, Jasmine,
8 please -- the Court has actually put into your jury
9 instructions the quote, the controlling quote for the crime of
10 resist, delay and obstruct. And isn't it interesting that
11 every time the defense, the counsel and the deputies talk about
12 this statute -- I'm going to come over here again. Isn't it
13 interesting that every time they talk about it they leave out
14 this word, unlawfully? They just want you to skip ahead to the
15 word resist, delay or obstruct and forget what comes before it.

16 The evidence is -- the law is, if a citizen is not
17 breaking the law, if they have a lawful right to do what
18 they're doing or say what they're saying or to be in the place
19 where they are, you cannot commit the crime of resist, delay
20 and obstruct. You cannot act unlawfully if you are, in fact,
21 within your lawful rights to do what you are doing.

22 They all admit to you it's private property. He
23 wasn't violating any crimes. He was just sitting in his truck
24 on private property. The best they can do is to say he --
25 Deputy Spivey was blocked or trapped or obstructed and he

1 couldn't drive around and leave. And what did they -- what
2 evidence did they bring to you about that? Was this terrifying
3 grass and this dangerous-looking vegetation and grass. That
4 was it. That's it.

5 Their own expert, though, Mr. Sutton -- I don't even
6 think we need to pull it up. It's Exhibit -- I think it's
7 Defense Exhibit 166.

8 You remember the overhead shot that he did? And he
9 somehow calculated the blue rectangle -- here it is. Thank
10 you.

11 He somehow calculated the blue rectangle of Deputy
12 Spivey's car and the black rectangle of Mr. Morgan's truck.
13 And everyone else admitted it's pretty hard to tell exactly
14 where they were when you look at the angles of the dash cam,
15 but somehow with his math he has calculated exactly where they
16 are.

17 But look at this. On his own exhibit that he created
18 for you, it's got gigantic tire marks going right around
19 Mr. Morgan's truck, back on to the field -- or, excuse me, back
20 on to the path. Their own exhibit proves to you that you can
21 drive right around the truck and you don't have to go through
22 the guide wire, you don't even have to go out the grassy ditch,
23 which would be fine -- by the way, you've seen that -- you just
24 go right around him and leave the way you came in. If that's
25 what you actually want to do, you can do it.

1 The other thing I'll just point out about this, while
2 it's on the screen, I would urge you all to take a close look
3 at this, when you think about Mike Sutton and what did he bring
4 to the table and why he's actually here?

5 Where are the rear wheels on Mr. Morgan's truck on
6 his own diagram? They're sitting on the dirt path that he told
7 you, oh, yeah -- well, if it was on loose dirt and it was
8 floored, you would see some rut marks then, you would see some
9 signs then. He's got the rear wheel sitting on the dirt path.
10 Why is Mr. Sutton even here?

11 Here is what I submit to you -- you draw your own
12 conclusions. This is what I submit to you: Mr. Sutton is here
13 as a paid expert. He says he's from Raleigh and he works in
14 Raleigh, but he also mentioned he lives in Charleston now and I
15 guess he just travels. Charleston is a very nice place. He
16 makes \$325 an hour to do this. He has over 50 hours in this
17 case. I think that's about -- that means he's getting paid
18 about \$16,000 to make these exhibits for you and give these
19 opinions.

20 Why is he here? I would submit it's because the
21 defendants and their attorneys have known from day one that
22 their testimony is not true about the tires spinning, the
23 accelerator being floored. They knew it when they went into
24 the criminal trial. The criminal jury said no way, we're not
25 buying that. They've known it from day one when this lawsuit

1 was filed. They had to do something about it. They can't live
2 with the actual facts of this case so you hire an engineer
3 expert to engineer new facts for you because the actual facts,
4 you can't live with them. That's why Mike Sutton is here, I
5 submit to you.

6 And the Court will instruct you that when it comes to
7 expert witnesses, you decide whatever you want on whether to
8 believe them.

9 And that's true for our experts, too. If you don't
10 think that Mr. Cloutier was credible based on his experience or
11 Mr. Henley was credible when he showed you his demonstration of
12 what actually happened to him, if, for whatever reason -- you
13 don't have to believe them. But just because somebody comes in
14 and says I'm from NC State, I'm an expert engineer, I used
15 math -- which I think everybody in this room knows you can do
16 whatever you want with numbers. You can turn numbers and
17 manipulate them however you want. They're not just black and
18 white.

19 Just because they're an expert doesn't mean you have
20 to accept anything, anything about their testimony.

21 And even Mr. Sutton told Mr. Zaytoun, oh, yeah, I am
22 not giving the opinion that the -- that an officer would
23 actually be able to move with a truck accelerated like I showed
24 you in my demonstration of acceleration. I had the same
25 thought you did, Mr. Zaytoun; I'm not giving that opinion. And

1 by the way, I also agree that there's not a single piece of
2 evidence that would ever even support the deputy's under oath
3 testimony that the tires were spinning and grabbing the dirt as
4 he floored the accelerator.

5 Mr. Legan's duty to intervene, his duty to intervene,
6 which you're going to see an instruction from the Court on
7 that, but it is the law. And you also saw that he had his own
8 written policies and procedures from Wake County Sheriff's
9 office that said you need to intervene if you see a fellow
10 officer violating someone's constitutional rights.

11 And Mr. Little said they only asked him one or two
12 questions on cross. Well, that was me, who did the
13 cross-examination. And I hope that you appreciated our attempt
14 at brevity, to get to the point and move this case along. And
15 I asked him three questions. And here's why, because that's
16 all you need to know about Deputy Legan and whether he failed
17 to intervene.

18 He said:

19 "ANSWER: I did see Deputy Spivey extend that baton
20 as soon as he got out of the car. And when I told you I was
21 six to seven feet away from him and I was back at the corner of
22 the truck, that was actually after the truck had already
23 started to move. When he was standing there pulling Mike out
24 of the window I was only two to three feet away."

25 That's arm's length. He could have touched him. He

1 could have said whatever he wanted to. He was right there.

2 And then, the last question was:

3 "QUESTION: And you told the SBI and the criminal
4 jury multiple times that you watched Deputy Spivey pull this
5 man a third of the way up and out of the window?"

6 And he said:

7 "ANSWER: Yes, sir, just like I told you today."

8 No further questions because none further are needed.

9 Use of force factors. There's a jury instruction
10 you're going to see on this. I'm going to do this very briefly
11 because it's my argument to you, it's my submission to you that
12 this is easy and it doesn't require a whole bunch of analysis
13 to get this right about police procedures.

14 They ripped a man out of a window, the truck started
15 moving and he got shot because of it. It's really that simple.
16 But when it comes to use of force the Court is going to tell
17 you that there are factors. You may have even heard the
18 evidence when you looked at the BLET manuals, it's actually
19 called the Graham factors from the *Graham v. Connor* case.
20 Those factors will lead you to the right answer on Deputy
21 Spivey's excessive use of force in this case.

22 Those factors are: What was the severity of the
23 alleged crime at issue? Well, there is no crime at issue. If
24 you find his arrest is unlawful because there was no probable
25 cause to believe he had committed a resist, delay and obstruct,

1 there is no crime Mr. Morgan was committing. That factor
2 weighs one -- literally 100 percent in Mr. Morgan's favor.

3 Whether he was resisting arrest. If the arrest is
4 unlawful, then a citizen has a right to resist. Was he
5 resisting? No. He was getting his body jerked out of the
6 window. But even if he was, if it's an unlawful arrest you
7 have a right to resist.

8 You heard that an officer can be charged with assault
9 if they go and use force against you when there's no right to
10 arrest to begin with.

11 And then, the third factor has zero application to
12 this case, was he fleeing arrest? Pretty hard to flee when
13 you're literally being pulled a third of the way out of the
14 window.

15 So you actually use those factors, they lead you to
16 the right answer, when you go through all of that analysis,
17 even though it's a really easy case if you just take a step
18 back.

19 And then, deadly force. Deadly force is the same
20 way. You use the same factors except there's a special rule
21 that gets put on top of the deadly force -- of the force
22 factors. When you're going to hold your gun and fire -- well,
23 do you remember what I said in opening when I showed you the
24 rules that you would hear about in this case? And note, a
25 reasonable officer can never pull out his gun and fire if it's

1 plain to see that the citizen isn't the one posing a threat of
2 harm to anybody.

3 What they continually leave out every time they talk
4 about deadly force is the words that you're going to see in the
5 Court's instruction.

6 Can we actually go to that, Jasmine; the deadly force
7 instruction? Right there at page 26. If you'll scroll down.
8 Pardon me. I'm going to come over here one more time. Right
9 there. Perfect.

10 You have to determine, based on a reasonable officer
11 on scene -- not what Deputy Miller says. You're allowed to
12 disbelieve, by the way, what Deputy Miller says and you can say
13 no, I think he actually saw it happen a different way than what
14 he's telling you.

15 But as you come down here through the test that the
16 judge will give you, it says: "You must determine if a
17 reasonable officer in the same circumstances would have
18 concluded that the suspect poses a threat justifying a
19 particular use of force by Defendant Miller."

20 "The suspect," whether the plaintiff posed an
21 immediate threat to safety. What did they say when they
22 described it to you? They always leave out that part. And
23 they say the test is, just: Was there a threat present of some
24 kind? If there's a threat, boom, you can shoot the citizen.
25 That is not the standard. The standard is, would a reasonable

1 officer have believed the suspect was creating a threat, the
2 suspect was posing a threat? Then, and only then, can you
3 shoot the suspect; twice.

4 Who was creating the threat here? Who posed the
5 threat here? And who did Deputy Miller see was creating this
6 threat? Deputy Spivey. Pulling him out of the window and off
7 the brake. Not Mr. Morgan.

8 I'm just going to move on from these. I wish there
9 was time to show you all the flaws in their case, but there
10 just simply isn't. And I need to move on to the most important
11 part of the case.

12 And I want to transition now and talk with you about
13 your extraordinarily important job of valuing the fullness of
14 what was taken from Mike Morgan in this case through no fault
15 of his own.

16 His injuries and limitations, they were thrust into
17 his life by the defendants, who chose to violate their own
18 policies and procedures and even the most basic rules of law
19 enforcement. You can't needlessly escalate an encounter. And
20 those rules are designed to protect all of our Fourth Amendment
21 rights.

22 Now, this case is not about medical bills or lost
23 wages. And Mr. Ellis has told you several times you haven't
24 heard anything about his business losing income and lost wages.
25 It's not about that. Those numbers pale in comparison to the

1 real human damages that he now will live with for the rest of
2 his life. So these are life-altering damages.

3 And your job is, you have to sit as a group of
4 appraisers -- that's really the way -- I think the best way to
5 think about it, you're appraisers. And you have to come up
6 together with a value that measures the full magnitude of what
7 was taken from him. It's not about how much he's going to get.
8 It's about how much was taken from him and will be for the rest
9 of his life. So it demands a remedy that measures that full
10 extent of the laws.

11 And it's my job here at the end to give you some, I
12 guess you would call them, measuring sticks or ways that you
13 can think through this, to help you in that process of
14 assessing what is fair value, what is just value.

15 And rather than just pull a number out of thin air
16 and say this is what you should award, I'm going to walk you
17 through some of this and give you some -- some measures and
18 some ways to do this that I think will make sense to you and
19 will help put things in the proper perspective.

20 Becoming permanently disfigured in his right hand,
21 his dominant hand, is a terrible injury, but it's the tip of
22 the iceberg.

23 Honoring -- if you honor the oath that you took to be
24 jurors in this case, then that means that we have to kind of
25 stare into the reality of what lies beneath the exterior that

1 Mike puts on when he's up here to try to show that he's a
2 fighter and that he's going to be working through all of this.
3 We have to pull that back and see what's underneath the shield
4 and actually have to stare at these damages. And it's
5 uncomfortable to talk about and it's hard to do, but that's
6 what you have to do as jurors in this case.

7 So the law is not just on liability that you're going
8 to get. There is a whole body of law that the judge will
9 instruct you about on damages. And you'll see the law requires
10 you to value each categories of harms and losses that have
11 actually been caused by the improper conduct in this case.

12 I'd like to look at that law with you and show you
13 that everything I'm saying comes straight from that law. But
14 before we look at that, I wanted to briefly look at the burden
15 of proof instruction, if we could, please.

16 As you know, this is a civil case. And the burden of
17 proof for -- the party who bears it -- and by the way, there
18 are aspects of this case that you're going to hear about that
19 the defense bears the burden of proof on, not us. There's
20 going to be a series of questions on your verdict sheet that
21 kind of look like they come out of nowhere almost, questions
22 about whether certain facts are true or not, certain specific
23 facts. And the Court will instruct you on those special
24 questions that it's the defense who bears the burden of proof,
25 not us.

1 But on the ones that we bear the burden of proof
2 on -- and I just wanted to remind you what the actual language
3 is that you're going to be instructed on. It just says that
4 you have to decide if we've proven a claim more likely true
5 than not true. You can -- it says, just think about the scales
6 of justice and have we tipped the scales somewhat on its side.
7 If we just tipped it somewhat, then in a civil case we've met
8 the burden of proof of proving that.

9 What I really wanted to draw your attention to, if
10 you'll scroll down, is the paragraph right below it. Do you
11 remember in jury selection when there was a question to make
12 sure everybody understood this was not a criminal case and
13 there's a different burden of proof in a criminal case? This,
14 the beyond a reasonable doubt proof, doesn't exist here. And
15 the judge's instructions say you have to put that out of your
16 mind.

17 Well, here's the way I think that you should think
18 about that. If you have a doubt in this case about one of our
19 claims or one of our issues, a doubt does not create an out for
20 the defendants. Doubt is okay in a civil case. All you have
21 to decide is we're more likely true than not in what we've
22 proved. Even if you have some questions, if we're more likely
23 true, then we've met our burden of proof.

24 Could we go to the actual damages jury instruction,
25 please?

1 Okay. If I may, I'm going to come over here again
2 with you, just so I can point to some things.

3 You're going to get this instruction that's called
4 Actual or Nominal Damages. Nominal damages are really simple.
5 They're at the end of this instruction. I won't even spend
6 time talking with you about them because when you hear the
7 judge read them out, it makes perfect sense to you the first
8 time through. So I don't need to even waste time on that.

9 Actual damages, that term under the law, it means a
10 lot more and I need to talk with you about that.

11 Jasmine, if we can scroll down to the third
12 paragraph. Right here.

13 "Actual damages may not be based on speculation or
14 sympathy." So we don't want you to have sympathy for
15 Mr. Morgan and say, well, that's the reason I'm giving the man
16 this, because I feel so bad for him. We want you to award
17 damages if we have proven that to you based on the evidence.

18 But the sympathy rule applies on the other side, too.
19 You can't have sympathy for the defendants and say I feel bad
20 for them. They got themselves in this mess now. You can't
21 have those kind of thoughts. You have to look at what the
22 evidence is.

23 It says: "Actual damages must be based on the
24 evidence presented at trial and only that evidence. You should
25 consider the following: Past, present, and future damages."

1 So it's three things, past damages, present damages,
2 and future damages. To the extent you find any are proved by
3 the preponderance of the evidence, which is the burden of proof
4 I was just talking about.

5 So those three things lead us to the categories of
6 damages that you can consider for the past, present or future.

7 Have we proved any past, present or future physical
8 pain or emotional pain or mental anguish? That's category one.

9 Have we proved any scars or disfigurement in the
10 past, present or going into the future?

11 Have we proved partial loss of use of a part of the
12 body, of body parts? That's a separate category of damages
13 that the law says you have to consider it.

14 Have we proved any past, present or future damages on
15 it?

16 And then, the last one is a big one, permanent
17 injury. That one looks forward. You can clearly see that one
18 looks forward, permanent injury for all time.

19 Now, if you scroll down, Jasmine, please.

20 The next paragraph, I believe, is the one that says
21 no double-dipping, basically. When you consider all this and
22 try to work it all out, you can't award damages in the same
23 category twice. You can't double count damages is what the
24 instruction says.

25 So how in the world are you going to do this? I have

1 a method, that I'm getting ready to show you, that I submit if
2 you follow this method it makes it impossible to double dip.
3 And I think it'll make sense once we look at it.

4 And then, the next one is the last one I wanted to
5 look at, the paragraph -- if you'll scroll down just a little
6 bit, please; thank you -- that says: "An attorney is allowed
7 to suggest an amount of damages and, therefore, can suggest an
8 amount for each day of physical pain or mental suffering.
9 However, there is no fixed formula for any of this and you use
10 your own common sense in deciding it."

11 You don't have to accept what I say or what they say.
12 There is no fixed formula you have to use, but the law says
13 that we are allowed to make suggestions to you about amounts.
14 And you can look at it by breaking things up into more
15 manageable sections about days and amounts of time and what's
16 it going to be like for Mr. Morgan when we break it up into
17 these more manageable sections. So I wanted to show you that
18 because that's part of what I'm going to do in my discussion
19 with you.

20 So it all -- everything I'm going to tell you comes
21 straight out of this jury instruction.

22 So if I was sitting there in your position, I would
23 be saying: How are we expected to do this? Well, let me show
24 you what I mean by that.

25 Jasmine, can we go back to the presentation screen,

1 please? I think this is still on...

2 Okay. Here's about the only way I know how to do it.
3 I suggest that you-all start by thinking in your minds what
4 types of damages have happened here, what types of injuries.
5 And the first, obviously, is the shooting, the shooting damages
6 and everything that flowed from that. And so what I've done
7 is, I've broke this up -- and I'll walk over here again; be as
8 brief as I can. I've broken this up to make it impossible for
9 you to double count.

10 The first section up here under shooting damages is
11 only the stuff that you may find are damages that we proved
12 from the day of the shooting all the way up until today;
13 physical pain, emotional pain, mental anguish, loss of use of
14 his body parts from the day of the shooting up until today.

15 Stop. That's past to present.

16 The next one is future. Separately you look at what
17 should be valued for going forward in his life.

18 Then, if you add those two things together you can
19 now have a figure for the shooting damages. That never double
20 counts and never double dips.

21 Future injuries. While we're on this topic, just let
22 me say that you might recall at the end of our case in chief,
23 before we rested, Mr. Zaytoun read out to you a stipulation
24 that the parties have entered into. And a "stipulation" means
25 both sides agreed to it, it's an accepted fact in this case.

1 Mr. Morgan's life expectancy, looking forward how
2 many years he has left as a matter of law that you have to
3 value and consider is 40.1 years. He's 38 years old today. So
4 he has more than half of his life left ahead of him, and that's
5 what we have to value.

6 So let's talk this first block, past to present, just
7 for the shooting damages. What is the evidence that we brought
8 you? Some of this is hard to look at. I'm sorry, but it is
9 important. This is the photograph that Dr. Erdmann took of
10 Mr. Morgan's hand. You can see bone. You can see tendon. You
11 can see what he described to you is a very gross term, what he
12 described to you as a degloving injury. I know it's gross, I'm
13 sorry, but it's very, very important because this is what
14 happened to Mike Morgan right there.

15 He also showed you that this was a
16 through-and-through bullet wound; meaning, the bullet went
17 right through. And you know it did because it went right
18 through the driver's door and almost hit Deputy Spivey.

19 But over on the right side of the screen -- do you
20 remember how Dr. Erdmann showed you that the top half of the
21 metacarpal bones, the word he used, that they were obliterated
22 in this gunshot? Obliterated.

23 He showed you the knee entry wound, inside of the
24 left knee, right here. And that bullet is still there right
25 now in his knee bone. He described to you how it fractured

1 that bone. And medically, it's still there. Here is the
2 actual x-ray we put into evidence that shows you the bullet and
3 the bullet fragments that are still in his bone, and will be
4 there going forward.

5 This -- I'm going to come over here again. This is
6 not the first x-ray of his hand. This is the final x-ray that
7 Dr. Erdmann took. And the reason I put this one up is because
8 look at the huge space, where he literally has no bones
9 anymore. The metacarpal heads and the -- half of the
10 metacarpal bones in these three fingers are literally gone.
11 And Dr. Erdmann told you with that kind of injury, what I would
12 expect to happen is those three fingers -- because they just
13 have no more support here -- are going to sink back down into
14 his hand. And you saw it, that's exactly what Mike's hand
15 looks like today.

16 He stood up in front of you, which I'm sure is not a
17 very comfortable thing for somebody to have to do, and
18 displayed his hands to you. And he said this is like Jello or
19 jelly, I think is what he said. He literally has no use of
20 these three fingers. And that's why Mr. Zaytoun says it's kind
21 of like a crab claw. That's what he's got.

22 Dr. Erdmann discussed in his medical records how
23 Mr. Morgan experienced 10 out of 10 pain. Excruciating was the
24 word in the medical records. Crying. He was in tears.
25 Dr. Erdmann had to get the acute pain service to try and come

1 in and help with this.

2 Could you pull up the Defendant's Exhibit 1 from
3 Dr. Erdmann's deposition?

4 There's something I want to show you. The defendants
5 in this case introduced as Exhibit 1 to Dr. Erdmann's
6 deposition Mike Morgan's sworn discovery answers, his
7 interrogatory answers, where they asked him a whole lot of
8 questions about his damages and he had to answer them all.

9 Could we scroll down to page 2, beginning at page 2
10 and zoom in, please?

11 Interrogatory No. 1. Now, we didn't put this into
12 evidence. The defendants put this into evidence. And the
13 first question they asked him is: "Describe in detail every
14 injury or disorder you contend you suffered as a result of the
15 incident."

16 And if you'll scroll down, I wanted to show you, when
17 they told you -- when Mr. Ellis in particular told you there is
18 no evidence in this case of these categories of suffering and
19 injury, this is what they put into evidence. It's his own
20 answers that he gave them in writing years ago about what
21 happened to him.

22 The physical injuries, I've already described those
23 to you and shown you pictures of. But look right there at
24 emotional harms; emotional distress, anxiety, PTSD, depression,
25 loss of sleep, loss of livelihood and sense of purpose related

1 to physical limitations from the gunshot wounds, damage to and
2 harmful stress placed on his family unit and close
3 relationships such as wife, children, et cetera.

4 If we can keep going.

5 This thing goes on and on and on. "Feeling of
6 unending or constant stress and headaches caused by the worry
7 and anxiety of criminal charges and this civil litigation and
8 Mr. Morgan's future as a result of the damages he continues to
9 endure."

10 Look at the next category. Reputational harms;
11 damage to his personal and business reputation. And you never
12 heard one iota of evidence to rebut what we're about to read.

13 Numerous news articles surrounding his arrest that
14 have been published online and still accessible through search
15 engines such as Google, if you Google him.

16 Mr. Morgan's reputation in and around his community
17 was tarnished.

18 Mr. Morgan has on several occasions been unable to
19 qualify for firearms permits because of this charge and the
20 assumptions they make about him because of these charges.

21 His criminal record information. His criminal data
22 that shows up in the police reports. You've now seen the CAD
23 log. They all show threats to law enforcement officer about an
24 incident that he was found not guilty of and now he's in a
25 civil trial about.

1 Mr. Ellis attempted to attack the credibility or
2 diminish the impact of the testimony of Mike's son, Kyle. I
3 will leave to you and trust you, as the jury in this case, to
4 decide whether Kyle Cox was a believable witness when he told
5 you how his dad has changed and how he's no longer the dad that
6 he once had.

7 If we can go back to the presentation, please.

8 So when you add all of those things together for six years
9 that this has been happening for Mr. Morgan, from the day of
10 the incident up until today, six years -- and you have your
11 common sense to know that the first years and first months
12 especially of a terrible physical injury or debilitating injury
13 are the worst; they're when you're having to overcome all of
14 the pain and medical issues that you faced, the surgeries, the
15 recoveries, and then trying to adapt your life and learn how to
16 live. They're the hardest, they're the worst.

17 So for six years our first category is this past to
18 present physical pain, emotional pain, mental anguish, loss of
19 use of his body parts. We submit to you that a fair and just
20 number for those six years is 1.5 million.

21 All right. Then we go to looking ahead and to the
22 future. And remember, I read you that section that said
23 attorneys are allowed under the law to make a suggestion to you
24 about breaking down damages into days and chunks of time? And
25 that's what I'm getting ready to do. And I want to tell you

1 why. It's because we live our lives in chunks of time. That's
2 how we just think about things. We live it moment to moment.
3 When things in our life are bad, we don't just go to bed and
4 wake up and they're not bad anymore. We have to deal with them
5 in that moment of time.

6 The value of time is important to us. We measure
7 things by the day and by the hour. How many hours is left
8 until the afternoon break? How many hours until the grandkids
9 get here? How many hours until the grandkids leave? That's
10 how we think about life. So that's why I think it makes the
11 most sense to try to come to grips with how are you going to
12 value 40.1 years of what he's got ahead of him.

13 Well, let's look at that, if we could. He was 31
14 years old at the time of the incident. He's 38 years old
15 today. He has 40.1 years of life ahead of him for the future.
16 So you can do -- this is simple math you can do. That's 14,636
17 days that he has left to live. And if you say, well, he's --
18 let's just give him an average of eight hours of sleep a night.
19 And when he's asleep, let's just say for the purposes of our
20 discussion, it's a restful sleep and he doesn't struggle with
21 it even though you saw he has loss of sleep as one of his
22 categories of damages. Let's just say it's restful sleep.
23 That would be 16 hours a day when you're awake.

24 And so with 14,000 days at 16 hours awake where
25 you're going to have to deal with this and be aware of it,

1 that's a little over 230,000 waking hours for the rest of his
2 life that he's going to be conscious, he's going to be aware
3 and he's going to know that he's got these problems and
4 limitations. So we kind of start there when we think about
5 this.

6 And what if we were only talking about his hand?
7 What if that's all we were talking about? Nothing else. You
8 know he's right-handed. His loss was sudden -- I mean, it's as
9 sudden as you can get with a gunshot. He wasn't born like
10 this. He lived for 31 years with a strong right hand, doing
11 everything he did; climbing trees, hunting, fishing. Doing all
12 the things he did the way he did them. He lived a happy,
13 active life.

14 And he will now live the next 40 years trying to
15 learn to adapt the best he can. And he's going to adapt as
16 best he can. He's going to try to overcome because he is a
17 fighter through all of this. He will -- Mike Morgan, you have
18 seen now, is not the type of person where you tell him you
19 can't go climb that tree or you can't go fishing with your son
20 anymore. He's going to figure out the best way he can to make
21 that happen. But it will always be there, it will always,
22 always alter the way he uses everything that comes into contact
23 with his hand.

24 Could we go back to the defendant's exhibit -- his
25 interrogatory responses?

1 I want to show you something.

2 If we could scroll down. I think it's maybe even
3 into the next page here. Keep going, please. I think we have
4 to come a little bit further. A little bit further. Okay.

5 This is a question where they asked him: "What are
6 the activities that you either can no longer do or you say you
7 have difficulty doing now because of your physical
8 limitations?"

9 And I wanted to show you a couple of these because
10 they are pretty powerful when you think about them.

11 I'll come over here just so I can see better.

12 Sometimes, ladies and gentlemen, sometimes it's the
13 little things that show you so much about a case. Yeah, we've
14 heard about the sports. Yes, we've heard about football and
15 fishing and all of that. But what about this? Shaking hands.
16 None of you have shaken Mr. Morgan's hand, but he's
17 right-handed. He has to extend that hand out to everybody who
18 offers him a shake. And that's got to go in the other person's
19 hand. And he knows it's really weird. He knows that the other
20 person feels it's weird, sees it. It's awkward. He's got to
21 deal with that every single time he meets somebody, every
22 single time he's trying to deal with somebody in the business
23 world or just personal world. That's a little thing. Think
24 about that.

25 Writing. I don't know how you use your pen or

1 pencil. I use four fingers to write with my hand. Could I
2 write with two? Yeah, I could. Would it be different and,
3 quite frankly, would it be crappy to have to adjust that way
4 for the rest of your life and have it slip out of your hand?
5 Yes, it would.

6 How about unable to snap fingers? The little things.

7 Swimming. You swim -- you put your fingers together
8 and you swim or you swim like this (indicating). He literally
9 cannot do that with his hand. He literally cannot put these
10 fingers together like that. Does that mean he can't swim and
11 jump in the pool? No, he can jump in the pool. Is it
12 different and noticeable every time he has to move? Yes.

13 How about this one? These are the things that are
14 hard to talk about. "Problems being affectionate towards
15 spouse in any way that requires him to use his hand." I don't
16 need to go into all of that.

17 These are the things that the defendant said you have
18 no evidence that this has impacted his life.

19 If you can scroll down, please, Jasmine.

20 There are so many of these that you can go -- can you
21 scroll down even more, please, to the next page?

22 Carrying groceries, pushing shopping carts.

23 Look at this. This is another one that is kind of
24 hard to talk about. Personal hygiene, going to the bathroom.
25 Now he has to use his left hand to clean himself and to wipe.

1 And, you know, can he go to the bathroom, can he clean himself?
2 Yes. Does he have to use his off-hand every time and is that
3 just frustrating and probably not as clean as it was and you
4 have to get used to all that? Yeah. These are the things that
5 are like -- you got to talk about them, but nobody wants to.

6 The last one I'll just mention on this list,
7 Mr. Morgan, through his interrogatory responses, has told you
8 that even his friends and family have been uncomfortable
9 handing him a baby to hold because they're worried he won't be
10 able to hold on to the baby.

11 This didn't happen to him when he was in his 80s or
12 70s. It happened when he was 31 years old.

13 So if we can go back to the presentation screen,
14 please.

15 So what do we do about this? Well, I would submit to
16 you that it's not worth less than the six years to date. It's
17 not worth less. I would submit to you that another 1.5 million
18 is a floor that is very reasonable.

19 You have no limitations, by the way, on what I say.
20 You can award -- if you want to go higher or lower, you have
21 the complete power on that.

22 But I submit to you this is a reasonable floor to
23 start with. And using our math and breaking things down into
24 days and hours, that right there, when broken down into real
25 world chunks, represents about \$6.50 an hour for each hour that

1 he's going to be awake for the rest of his life. I mean,
2 that's less than the minimum wage.

3 So you add those two things together, of course,
4 that's \$3 million for the shooting damages. And that's a lot
5 of money. That's a lot of money. But a lot was taken from
6 Mr. Morgan, through no fault of his own.

7 There's a different category, a completely different
8 category that I want to show you next. I call them the
9 criminal prosecution damages.

10 Notice that I didn't say anything to you in the
11 shooting damages portion about all that he's had to deal with
12 from the warrants for arrest, the indictments, the fact that he
13 was facing all of these felonies and he had to go through that
14 trial.

15 This is a different claim. It is called under the
16 law malicious prosecution. Though, when you actually hear the
17 law and you get it from the Court, the word malice doesn't even
18 apply in any of the elements that have to be proven. All we
19 have to prove on this claim, by the way, is three things: That
20 Mr. Morgan was unlawfully arrested that day, an unlawful arrest
21 occurred; number two, that the defendants caused -- that they
22 just caused criminal prosecution to happen, criminal charges to
23 be taken out against Mr. Morgan; and then, three, that those
24 charges terminated in his favor, they ended in his favor,
25 which, of course, is undisputed. The jury in Wake County,

1 unanimous not guilty.

2 Even if the -- the jury instructions will show you
3 this. Even if a magistrate or a Grand Jury found probable
4 cause, that doesn't mean this claim just disappears.

5 If you find that the reason the magistrate or the
6 Grand Jury said we're going to issue that indictment or we're
7 going to issue that warrant for arrest is because of the
8 information that Deputies Miller, Legan, and Spivey provided,
9 and the fact that they said he was drugged or dragged with the
10 truck as a deadly weapon, and you say that was not true, that
11 didn't happen, then the magistrate, the Grand Jury, they were
12 misled, they were misled by the untrue statements of the
13 deputies. And if that's true, then Mr. Morgan has proven his
14 criminal prosecution or his malicious prosecution claim.

15 So what -- how do you value that as a category of
16 damages? Well, there's one exhibit that was introduced that I
17 think can help you. This was with Mr. Lane, Rob Lane. It was
18 the summary of incarceration and house arrest. We don't have
19 to go through all of this that he went through, but because of
20 these charges that were wrongfully taken out against him, based
21 on the deputies' statements of what happened, he spent 133 days
22 in confinement, in jail institutes; as Mr. Zaytoun said,
23 treated like he was a death row inmate. But when he got out,
24 569 days of house arrest with a bracelet around his ankle. He
25 didn't even get the bracelet off until a week after he was

1 found not guilty.

2 Jasmine, can you pull up again the defendants'
3 exhibit, the interrogatory responses? And actually go to page
4 three, please. And if you'll scroll down.

5 There's a whole section I didn't read to you. See
6 that bullet there that says, "Loss of liberty and other harms
7 from improper incarceration and house arrest"? Mr. Morgan's
8 jail cell was tossed several times. He was not allowed to make
9 phone calls while he was in the medical ward. The prison
10 detention facility or medical ward failed to clean his bandages
11 and change his wounds and clean his fingernails.

12 Do you remember when he came back to Dr. Erdmann and
13 Dr. Erdmann said the bandage -- the dressing was bad enough,
14 but the skin was actually necrotic on the top of his gunshot
15 wound and it had pulled away so much that the antibiotic spacer
16 he put in was visible to the naked eye? Just exposed. Which
17 Mr. Morgan didn't know about because his hand was all bandaged
18 up and nobody had changed it while he was in jail.

19 He was denied transport to numerous physical therapy
20 sessions that his doctor ordered. He received threats of
21 violence from other inmates. Items were stolen from his room
22 by other inmates. He had -- I believe he told you that they
23 had medication mixups, where they gave him somebody else's
24 medications. He lodged numerous complaints because the
25 conditions were so terrible. And that's in his 133 days of

1 incarceration. That should have never happened.

2 If we can go back to the presentation screen.

3 So what do we do, then, about these damages? Well, I
4 submit to you that the fair and just value to be placed on your
5 liberty, being deprived of your liberty and having to go
6 through the criminal prosecution that he went through, is not
7 less than the total of those shooting damages that he went
8 through. I would say they're about equal.

9 So the easiest way I know how to do it is to say each
10 one of these defendants -- they each had a hand in it, by the
11 way. Charlie Johnson told you that after that shooting
12 occurred and he had been handcuffed and was laying face down in
13 the dirt and not moved over very nice and gentle to a sitting
14 area like Deputy Miller said, while he was laying there in the
15 dirt he could see the deputies -- and, oh, by the way, this was
16 after Spivey came around and said it don't matter where he's
17 been shot, that's what happens when you mess with the big dogs.
18 So after that, he could see the deputies standing together,
19 talking, in a place where they were far enough away where he
20 couldn't hear what they were saying, but his words were they
21 were conversating.

22 And then, isn't it curious that with no tire marks
23 out there at all, after they had just -- well, after Deputy
24 Miller had just shot this man twice, all three of them say the
25 same buzzwords and phrases; dragged by the truck, life was in

1 danger, fear in Spivey's eyes, floored the accelerator, tires
2 spinning, deadly weapon. Those are like the law enforcement
3 officer 101 class buzzwords to use to protect yourself when
4 something like this happens.

5 And did they have a motive to protect themselves?
6 Well, you've seen now how many policies and procedures of their
7 own they violated that night or that day; how many Basic Law
8 Enforcement training principles they violated that day. It was
9 just a matter of minutes before people were going to come on to
10 the scene. What in the world are we going to do about this?
11 That's how it all started.

12 So you make them equal to the shooting damages, is
13 what I respectfully submit that you do. So the shooting
14 damages are 3 million. You make this equal and you say each of
15 those officers who had an equal hand in it, a million dollars
16 adds up for each of them, to a total of \$3 million for the
17 criminal prosecution damages.

18 By the way, while we're here, I just got to show you
19 something.

20 Jasmine, can you pull up -- I want to say it's
21 Plaintiff's Exhibit 32. It's the CCBI report. Not the photos,
22 but the CCBI report.

23 I've got to show you this before I sit down.

24 As she's pulling it up -- I won't waste time -- do
25 you remember how the deputies told you when they were out there

1 in the field they didn't talk about this at all? They didn't
2 tell anybody anything; they got separated, got put in their
3 cars, taken down and that's when they gave their first
4 statements about what happened?

5 I distinctly recall Deputy Spivey saying that very
6 clearly, he didn't tell anybody, he didn't discuss it with
7 anybody in the field, he got taken down and gave his
8 statements.

9 Well, is that true?

10 MR. LITTLE: Your Honor, may we approach?

11 THE COURT: I'm sorry?

12 MR. LITTLE: Objection. May we approach?

13 THE COURT: All right. Come to the side.

14 (Bench conference on the record.)

15 MR. LITTLE: Judge, I'm looking at the last -- unless
16 I missed it, I don't see Plaintiff's Exhibit 32 on the clerk's
17 evidence list. What number is it?

18 MR. BALLEW: CCBI report. Right there, 26.

19 MR. LITTLE: Okay. Thank you.

20 (Bench conference concluded.)

21 MR. BALLEW: May I continue?

22 THE COURT: Yes.

23 MR. BALLEW: I had the wrong exhibit number. It's
24 Plaintiff's Exhibit 26, please. The CCBI report. There's a
25 lot of numbers. Sorry about that.

1 So while that's getting pulled up, we put this
2 document into evidence through Dave Cloutier. And it was the
3 report that CCBI did that night. Agent Harvey -- you may or
4 may not remember his name -- he was the person that took all
5 those photographs, by the way. He came out and did the scene
6 investigation and the report of what he found at the crime
7 scene.

8 And if you could scroll down, please, Jasmine.

9 There's something that hasn't been talked about yet.

10 Keep going. Keep going to his narrative part. Right
11 there. I'm going to come over here with you.

12 He talks about how he arrived on scene at 2047, 8:47
13 p.m., not too long after this shooting happened. And he tells
14 who he saw and what he did at the scene. And then, here's what
15 is really curious. Sheriff Harrison, so Donnie Harrison,
16 Sheriff of Wake County, is there. And what does Sheriff
17 Harrison say to Agent Harvey? "Sheriff Harrison advised that
18 the victim, Michael Morgan, was driving southeast on Wimberly
19 Road when Deputy Spivey was behind Mr. Morgan, which was not
20 true, noticed the registration on his vehicle had expired and
21 Deputy Spivey did attempt to pull the vehicle over; however,
22 Mr. Morgan left the roadway and drove off into an open field
23 northwest of 1116 Wimberly Road. Deputy Spivey continued
24 through the roadway and drove on to the open field" -- excuse
25 me, "continued to the turnoff and proceeded to cross the open

1 field in a northwest direction toward Mr. Morgan. Deputy
2 Spivey then pulled up to the front of Mr. Morgan's vehicle
3 causing him to stop," which we also know is not true.

4 If you'll scroll down.

5 "Deputy Spivey proceeded to issue Mr. Morgan four
6 citations, after which Deputy Spivey got into his patrol
7 vehicle and began to turn around towards the turnoff. As he
8 was doing this, he noticed Mr. Morgan driving erratically in
9 the field, doing what Sheriff Harrison described as doughnuts
10 in the open field. Deputy Spivey continued to cross the open
11 field." He goes on and on and on. "Mr. Morgan pulled his
12 vehicle in front of Deputy Spivey, prevented him from exiting."
13 At this time, Miller and Legan arrive on the scene, parked
14 their vehicles along the west shoulder." It goes on and on and
15 on. Next paragraph. "Sheriff Harrison advised Deputy Spivey
16 got out of his car, approached the driver's side of
17 Mr. Morgan's vehicle. Deputy Legan also approached the
18 driver's side. Deputy Miller approached the passenger side.
19 Deputy Spivey attempted to open the driver's door." It goes on
20 and on.

21 Here are your buzzwords. Here are your buzzwords.
22 They needed to be in there. "He then attempted to pull
23 Mr. Morgan from the vehicle, at which time Mr. Morgan
24 accelerated the vehicle, dragging Deputy Spivey along the side
25 of the vehicle. Sheriff Harrison advised Deputy Miller fired

1 two rounds in the opened front passenger window, striking
2 Mr. Morgan in the left knee and once in the right hand, at
3 which time he stopped the vehicle."

4 So is it true what the deputies said, that they
5 didn't talk about this at all and that nobody heard them say
6 anything, they didn't say it to each other and they didn't say
7 it to anybody else until they were separated and taken down to
8 give their interviews that night? Is that true? How in the
9 world did Donnie Harrison, the Sheriff, know all of that then?

10 Could we pull up the verdict sheet please, Jasmine?
11 You saw -- you can actually go right back down to where it was.
12 I think it's number 17.

13 You saw Mr. Zaytoun show you a bunch of the answers
14 about whether constitutional violations had occurred and
15 marking "yes" to those.

16 After you get through that, you get to the damages
17 issues. And that starts at number 17 and 18. And I just
18 wanted today show you how -- what I put on the screen for you,
19 how we submit you would translate that into writing over on to
20 the verdict sheet.

21 So if you could scroll down -- well, we're going to
22 come back to 17 and 18 in just a moment. If you can scroll
23 down right -- let's see. Go up. I'm sorry. Keep going up,
24 please. Keep going up. I'm sorry. Right there.

25 Number 16: "What amount of actual or nominal damages

1 is plaintiff entitled to recover from Deputy Spivey for his use
2 of excessive force?"

3 So this gets us to what I call the shooting damages.
4 So why am I talking about shooting damages when Deputy Spivey's
5 force was pulling him from the window? Well, it's because of
6 one more paragraph of law that you're going to get.

7 Could you please go to the jury instructions? Back
8 on the instruction for actual damages. We're right here. You
9 just scroll up to the page above it. And I can do this
10 briefly. One more paragraph up.

11 The Court is going to instruct you, when you decide
12 damages you just think about what's the Constitutional
13 violation at issue and then what are all the damages that were
14 proximately caused by that constitutional violation.

15 We know the excessive force here is literally being
16 pulled out through the window. But look at this instruction.
17 What does proximate cause mean? "An injury or damage is
18 proximately caused by an act or failure to act when it appears
19 from the evidence that an act or omission played a substantial
20 part in bringing about or actually causing the injury or
21 damage, and that the injury or damage was either a direct
22 result or a reasonably probable consequence of the act or
23 omission."

24 What was reasonably probable? What was a foreseeable
25 risk of walking up to a car -- to a truck in drive, with the

1 engine running, and somebody on the brake and literally ripping
2 him out through the window? We all know what happens. The
3 truck is going to move.

4 And what kind of risk does that create? I would
5 submit to you that it is reasonably foreseeable that some
6 officer who is also there on the scene may run up and
7 improperly, unjustified pull out his gun and shoot because, oh,
8 it just got so crazy.

9 So Deputy Spivey is not just liable for physical pain
10 and whatever injuries you find were caused by pulling him out
11 of the car. If you find that his actions in doing that, quote,
12 "played a substantial part in bringing about the shooting," and
13 that the shooting was one of the several reasonably probable
14 consequences that could flow from that, then you can find that
15 Deputy Spivey's excessive force includes damages for the
16 shooting.

17 So if we go back to the verdict sheet.

18 On number 16, remember how the shooting damages I
19 submitted to you was 1.5 -- excuse me, was \$3 million and you
20 had to divide that up? I would say here, for number 16, what
21 amount is Deputy Spivey responsible for? \$1.5 million.

22 Number 17, below it, should be the deadly force
23 question. Yes. "What amount is the plaintiff entitled to
24 recover from Miller for the unjustified use of deadly force?"
25 Same amount. \$1.5 million is what we suggest you write there.

1 The next one below that is: "What single amount is
2 the plaintiff entitled to recover for the criminal prosecution
3 damages?" And remember, we looked at that a minute ago, the
4 same total amount of 3 million. Right there for number 18 is
5 where we suggest you write in 3 million.

6 And then we can actually go up. Right there -- no.
7 Number 14, I think, is where we are. Yes.

8 So that brings us back to the beginning and the
9 search of the truck by Deputy Legan. Now, in fairness, that
10 search did not cause Mr. Morgan's hand injury, it didn't cause
11 his knee injury, it didn't cause him any physical injury, but
12 you did hear evidence that Mr. Morgan is scared, is concerned
13 about going out and about being confronted by other law
14 enforcement officers and what they might do to him because he
15 experienced all this happen to him and his rights being
16 violated.

17 In fact, if you -- I don't know how easy it is, if
18 you can jump back to the defense exhibit, the interrogatory at
19 page 3. Actually, right there, that bullet.

20 The second bullet, you see constant fear and worry
21 about the Wake County Sheriff's office coming on to his
22 property or around his home. And being under the Wake County
23 Sheriff's jurisdiction he fears that he and his loved ones and
24 his friends will be unfairly targeted and, quote, "guilty by
25 association."

1 So -- you can go back to the verdict sheet.

2 So the search didn't cause any physical injury. So
3 you should not value it as high as the other physical injury
4 and permanent injury damages. You'll have to pick a number,
5 what you think is fair and just for having your constitutional
6 rights violated right in front of your face and being told you
7 can tell me what to do when you go to law school. I submit
8 that a number that is fair and reasonable for number 14 is
9 250,000.

10 And then that brings us to number 15, which is the
11 unlawful arrest. And this is separate from Deputy Spivey's
12 excessive force, the force we just looked at. The fact that he
13 had his constitutional rights violated by being unlawfully
14 arrested is also worth something, but it's different from the
15 force. I would submit to you that it's worse than the search.
16 And so I would submit that on 15 you should write \$500,000.

17 And then, there's one final section of the verdict
18 sheet that you have to deal with in this case because it's an
19 element of this case. And I don't know if you've ever heard of
20 the term punitive damages. Some people have; some people
21 haven't. But you'll be asked to decide whether you believe, in
22 addition to all of the damages that we just looked at, are
23 punitive damages appropriate in this case? And you will have
24 guidance on this. It doesn't come from us. It comes from the
25 Court. You will get the guidance on what those standards are

1 for punitive damages.

2 And could we go to the jury instruction on punitive
3 damages briefly, please?

4 I'd just like to read this with you so you can see
5 that it is different from actual damages that we looked at a
6 minute ago. It says, if you find in our favor regarding any of
7 our claims, then you may, but are not required to, award
8 Mr. Morgan an amount as punitive damages if you find it is
9 appropriate to punish a defendant or deter a defendant and
10 others from like conduct in the future. In other words, you
11 only reach this punitive damages question if you have answered
12 yes to the numbered questions the Court has pointed you to
13 there on the verdict sheet.

14 But let me say that one more time, what the purpose
15 of punitive damages is. It can be to either punish the
16 defendant for what they did, if you find it was that bad or, or
17 using your verdict to deter the defendants who are still law
18 enforcement officers and others like them from committing
19 conduct in the future like this.

20 So if we scroll down, please.

21 We have to prove punitive damages by the same burden
22 of proof, preponderance of the evidence, just tipping the scale
23 somewhat.

24 And how do we prove it?

25 If you go down to the next paragraph.

1 We have to prove that their conduct at issue was in,
2 quote, "reckless disregard of Mr. Morgan's rights." And
3 conduct is in reckless disregard if under the circumstances it
4 reflects a complete indifference to Mr. Morgan's safety or his
5 rights.

6 When Deputy Legan searched that truck over objection
7 and said you can tell me what to do when you go to law school,
8 is that complete indifference to Mr. Morgan's rights?

9 When Deputy Spivey stopped his car and within one
10 second was out and extended the baton in what Mr. Cloutier and
11 Mr. Henley told you was offense, not defense, was that complete
12 indifference to his rights?

13 When Mr. Spivey literally pulled him a third of the
14 way out of the window when his foot was on the brake and made
15 the truck start rolling, was that complete indifference?

16 And when Deputy Miller shot him twice after he told
17 you, by the way, that he moved along with the truck doing a
18 glide walk -- did he say he was running? Did he run like
19 Mr. Sutton's accelerated demo showed of the truck? No. He
20 walked with it and saw all that he saw. It wasn't over in a
21 flash. He saw Spivey's look. He saw Morgan's look. He saw
22 what they were doing with their hands. He saw what they were
23 doing with their feet. He saw, he tells you, the tires
24 spinning. He heard the engine rev. He yelled commands.
25 Deputy Spivey yelled commands. Deputy Legan yelled commands.

1 This is all Deputy Miller's testimony, not us. That's all he
2 saw, all he did and all he heard up there. But yet, he wants
3 to say it happened like that (indicating). You can't have it
4 both ways. Their own expert showed you how slow the truck
5 moved.

6 So if you find all of that, then in your discretion
7 you can determine the amount of punitive damages to award.

8 And you get guidance on that, too.

9 And if you can scroll down.

10 You're allowed to consider factors in deciding what
11 is an appropriate amount of punitive damages. And I'm just
12 going to briefly touch on these with you.

13 The reprehensibility of the defendant's conduct. How
14 bad was this? How much does society not like this?

15 The impact that it had on Mr. Morgan, who is now
16 going to go 40.1 years with his permanent damages.

17 The relationship between plaintiff and defendant. I
18 don't know if they still have any interactions today, what they
19 see of each other, but you know what the past was; Deputy
20 Spivey said, I dealt with him over 100 times, which we know is
21 not true.

22 The likelihood that the defendant would repeat the
23 conduct if an award of punitive damages is not made.

24 So Deputy Legan is a highway patrolman now. All he
25 does is on the roadways, stopping cars and dealing with the

1 public in that manner. Is he going to search a car again and
2 tell another citizen you can tell me what to do when you go to
3 law school?

4 Deputy Spivey told you he's still in the Patrol
5 division at the Wake County Sheriff's Office. Master Deputy I
6 think he said his rank was.

7 Deputy Miller is very proud of the fact that he's now
8 back on the force with Capital City Police, all around our
9 State Capitol buildings. They're still out there.

10 If you let them have a free pass, so to say, if you
11 let them have a free pass, are they going to do this again?

12 And then number five says, "The relationship between
13 any award of punitive damages and the amount of the actual harm
14 that was suffered." So this is where -- if we can go back to
15 the presentation screen briefly.

16 That last factor -- we've already looked at this.
17 We've already looked at this.

18 The last factor, the relationship, I think it's
19 helpful if you're going to award punitive damages to look back
20 and to tie it to something you've already awarded damages for.
21 So I would submit to you that if you find punitive damages is
22 appropriate, that altogether it shouldn't be less than the
23 shooting damages itself or the criminal prosecution damages
24 itself. So that would be -- we know that's a total of
25 3 million. So we respectfully suggest if you find it

1 appropriate, that you should write in on the verdict sheet
2 \$1 million of punitive damages for each of the defendants.

3 And we can -- if we need to, we can go back to the
4 verdict sheet. But you have a question on each of the
5 defendants for punitive damages, and that's what we would say
6 to you.

7 And I've come to sort of my closing remarks here.

8 You, ladies and gentlemen, have a very rare power and
9 opportunity as a jury right now. Rarely do cases like this
10 come through. And we're in the federal courthouse in the
11 federal system. You-all came from many different counties.
12 You represent the Eastern District of North Carolina in the
13 Federal Courts and that's why you've been brought together.

14 You can turn this case into something that does a lot
15 of good.

16 The deter others prong -- do you remember how John
17 Combs told you, oh, yes, at the academy we pay attention to the
18 cases that come through? If there's important case law updates
19 that happen, we put them in our manuals and we train our cadets
20 on them.

21 You have the ability to send that type of message
22 with your verdict and to say nothing like this should ever
23 happen again and we should be able to stop it with some pretty
24 basic training. You have that power.

25 In our country, we do not believe in an

1 eye-for-an-eye justice. We don't -- we aren't allowed if we
2 win the case to say, well, you know, Deputy Miller or Deputy
3 Spivey needs to have their hand shot or a bullet put in their
4 knee or be incarcerated for 133 days or any of that stuff
5 because that would be barbaric. What happened to Mr. Morgan
6 was. We don't do that.

7 But what would also be very unfair and unjust is to
8 just overlook and fail to fully address when something like
9 this has happened.

10 I would remind you respectfully that it is not about
11 how much Mr. Morgan is going to get, but -- it's about how much
12 was taken from him and how reprehensible is this conduct and
13 what kind of message needs to be sent to deter it from
14 happening again.

15 Full responsibility means holding the defendants, the
16 people that caused this fallout from happening, fully liable.
17 If you fail to fully compensate Mr. Morgan, then you're not
18 creating a deterrent, you're not creating a deterrent that
19 would stop this kind of thing from happening again.

20 So the moment has come where we are privileged and
21 happy to give the case over to you, to put it into your hands.
22 And you're going to get to come together and you're going to
23 work together and you're going to deliberate. I don't know how
24 you'll compare to the criminal court in Wake County, but don't
25 even worry about that. You just come together as a group and

1 do as the judge has instructed you and we know that you will do
2 the right thing.

3 You were all picked because of this very important
4 work that has to be done and it's comforting to know that we're
5 turning over the case to you.

6 And I ask you, we all ask you on behalf of Michael
7 Morgan to please bring back a verdict that speaks the truth
8 about what happened, a verdict that reverberates outside these
9 walls and means something more than just this room in here
10 today, a verdict that says proudly that our constitutional
11 rights, no matter who you are, are sacred and inviolable.

12 Thank you very much.

13 * * *

14 (The proceedings concluded at 4:12 p.m.)
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1 UNITED STATE DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3
4

5 CERTIFICATE OF OFFICIAL REPORTER
6

7 I, Amy M. Condon, CRR, RPR, CSR, Federal Official
8 Court Reporter, in and for the United States District Court for
9 the Eastern District of North Carolina, do hereby certify that
10 pursuant to Section 753, Title 28, United States Code, that the
11 foregoing is a true and correct transcript of the
12 stenographically reported proceedings held in the
13 above-entitled matter and that the transcript page format is in
14 conformance with the regulations of the Judicial Conference of
15 the United States.
16
17

18 Dated this 28th day of October, 2019.
19
20

21 /s/ Amy M. Condon
22 Amy M. Condon, CRR, CSR, RPR
23 U.S. Official Court Reporter
24
25